INTERNATIONAL COURT OF JUSTICE

PLEADINGS, ORAL ARGUMENTS, DOCUMENTS

CASE CONCERNING THE CONTINENTAL SHELF

(LIBYAN ARAB JAMAHIRIYA/MALTA)

VOLUME II

Counter-Memorials; Application for Permission to Intervene
and consequent proceedings

COUR INTERNATIONALE DE JUSTICE

MÉMOIRES, PLAIDOIRIES ET DOCUMENTS

AFFAIRE DU PLATEAU CONTINENTAL

(JAMAHIRIYA ARABE LIBYENNE/MALTE)

VOLUME II

Contre-mémoires; requête à fin d'intervention
et procédure y relative

2

Abbreviated reference:

I.C.J. Pleadings, Continental Shelf (Libyan Arab Jamahiriya/Malta), Vol. II

Référence abrégée:

C.I.J. Mémoires, Plateau continental (Jamahiriya arabe libyenne/Malte), vol. II

Sales number
N° de vente: 581

4

CASE CONCERNING THE CONTINENTAL SHELF
(LIBYAN ARAB JAMAHIRIYA/MALTA)

AFFAIRE DU PLATEAU CONTINENTAL
(JAMAHIRIYA ARABE LIBYENNE/MALTE)

6

INTERNATIONAL COURT OF JUSTICE

PLEADINGS, ORAL ARGUMENTS, DOCUMENTS

CASE CONCERNING THE CONTINENTAL SHELF

(LIBYAN ARAB JAMAHIRIYA/MALTA)

VOLUME II

Counter-Memorials; Application for Permission to Intervene
and consequent proceedings

COUR INTERNATIONALE DE JUSTICE

MÉMOIRES, PLAIDOIRIES ET DOCUMENTS

AFFAIRE DU PLATEAU CONTINENTAL

(JAMAHIRIYA ARABE LIBYENNE/MALTE)

VOLUME II

Contre-mémoires; requête à fin d'intervention
et procédure y relative

8

PRINTED IN THE NETHERLANDS

The case concerning the *Continental Shelf (Libyan Arab Jamahiriya/Malta)*, entered on the Court's General List on 26 July 1982 under number 68, was the subject of Judgments delivered on 21 March 1984 (*Continental Shelf (Libyan Arab Jamahiriya/Malta), Application to Intervene, Judgment, I.C.J. Reports 1984*, p. 3) and 3 June 1985 (*Continental Shelf (Libyan Arab Jamahiriya/Malta), Judgment, I.C.J. Reports 1985*, p. 13).

The pleadings and oral arguments in the case are being published in the following order:

Volume I. Special Agreement; Memorials of the Libyan Arab Jamahiriya and Malta.
Volume II. Counter-Memorials of the Libyan Arab Jamahiriya and Malta; Application by Italy for Permission to Intervene, and consequent proceedings.
Volume III. Replies of Tunisia and the Libyan Arab Jamahiriya; commencement of Oral Arguments.
Volume IV. Conclusion of Oral Arguments; Documents submitted to the Court after closure of the written proceedings; Correspondence.
Volume V. Maps, charts and illustrations.

Certain pleadings and documents of this edition are reproduced photographically from the original printed text.

In addition to the normal continuous pagination, the Volumes feature on the inner margin of pages a bracketed indication of the original pagination of the Memorials, the Counter-Memorials, the Replies and certain Annexes.

In internal references, bold Roman numerals (in the text or in the margin) are used to refer to Volumes of this edition; if they are immediately followed by a page reference, this relates to the new pagination of the Volume in question. On the other hand, the page numbers which are preceded by a reference to one of the pleadings relate to the original pagination of that document and accordingly refer to the bracketed pagination of the document in question.

The main maps and charts are reproduced in a separate Volume (V), with a renumbering, indicated by ringed numerals, that is also added in the margin in Volumes I-IV wherever corresponding references appear; the absence of such marginal reference means that the map or illustration is not reproduced in the present edition.

Neither the typographical presentation nor the spelling of proper names may be used for the purpose of interpreting the texts reproduced.

L'affaire du *Plateau continental (Jamahiriya arabe libyenne/Malte)*, inscrite au rôle général de la Cour sous le numéro 68 le 26 juillet 1982, a fait l'objet d'arrêts rendus le 21 mars 1984 (*Plateau continental (Jamahiriya arabe libyenne/Malte), requête à fin d'intervention, arrêt, C.I.J. Recueil 1984*, p. 3) et le 3 juin 1985 (*Plateau continental (Jamahiriya arabe libyenne/Malte), arrêt, C.I.J. Recueil 1985*, p. 13).

READEX FICHE

10

Les pièces de procédure écrite et les plaidoiries relatives à cette affaire sont publiées dans l'ordre suivant :

Volume I. Compromis ; mémoires de la Jamahiriya arabe libyenne et de Malte.
Volume II. Contre-mémoires de la Jamahiriya arabe libyenne et de Malte ; requête de l'Italie à fin d'intervention et procédure y relative.
Volume III. Répliques de la Jamahiriya arabe libyenne et de Malte ; début de la procédure orale.
Volume IV. Suite et fin de la procédure orale ; documents présentés à la Cour après la fin de la procédure écrite ; correspondance.
Volume V. Cartes et illustrations.

Certaines pièces de la présente édition sont photographiées d'après leur texte imprimé original.

Outre leur pagination continue habituelle, les volumes comportent, entre crochets sur le bord intérieur des pages, l'indication de la pagination originale des mémoires, des contre-mémoires, des répliques et de certaines de leurs annexes.

S'agissant des renvois, les chiffres romains gras (dans le texte ou dans la marge) indiquent le volume de la présente édition ; s'ils sont immédiatement suivis par une référence de page, cette référence renvoie à la nouvelle pagination du volume concerné. En revanche, les numéros de page qui sont précédés de l'indication d'une pièce de procédure visent la pagination originale de ladite pièce et renvoient donc à la pagination entre crochets de la pièce mentionnée.

Les principales cartes sont reproduites dans un volume séparé (V) où elles ont reçu un numérotage nouveau indiqué par un chiffre cerclé. Dans les volumes I à IV, les renvois aux cartes et illustrations du volume V sont portés en marge selon ce nouveau numérotage, et l'absence de tout renvoi à la présente édition signifie qu'une carte ou illustration n'est pas reproduite.

Ni la présentation typographique ni l'orthographe des noms propres ne sauraient être utilisées aux fins de l'interprétation des textes reproduits.

CONTENTS — TABLE DES MATIÈRES

Page

Counter-Memorial of the Libyan Arab Jamahiriya — Contre-mémoire de la Jamahiriya arabe libyenne

INTRODUCTION 3

PART I. THE FACTUAL ELEMENTS 9

Chapter 1. The background of the dispute 11

Introduction 11
A. Legislation 11
B. Exchanges between the Parties in 1972-73 13
C. Petroleum activities of the Parties 16
D. The "no-drilling" understanding 21

Chapter 2. The physical factors of geography, geomorphology and geology 24

Introduction 24
A. The geographical setting of the dispute 25
1. Malta's neglect of geographical factors 25
2. The twin themes: "simple" and "normal" 28
3. "Location" and "distance" as discussed by Malta 29
4. The location of the Parties — the presence of third States . 30
B. The coasts of the Parties — the factors of length and relationship 34
1. The importance of coasts as reflected in the jurisprudence . . 34
2. Malta's neglect of coastal details 34
3. Malta's rationale for avoiding coastal details — its basepoints assertions 37
4. The major importance of the coasts of the Parties in the present case 40
C. The sea-bed and subsoil of the continental shelf areas 44
Introduction 44
1. Malta's treatment of geomorphology and geology 45
2. The importance of the physical factors of geomorphology and geology in the present case 51

Chapter 3. Economic and other considerations introduced by Malta 59

A. Economic considerations 59
1. Apportionment of natural resources 59
2. General economic factors 60
3. Fishing 63
4. Malta's status as an "island developing country" 67
B. Other considerations 71
1. The element of national security 71
2. Malta's neutrality 74
3. Malta's political status 75

Page
PART II. THE LAW 77
Chapter 4. Continental shelf entitlement and delimitation 79
Introduction 79
A. Entitlement 82
1. The continental shelf entitlement of islands 82
2. The coastal basis of continental shelf entitlement 85
B. Delimitation 89
1. The relative weight of coasts of different lengths for purposes of delimitation 89
2. The alleged privileged status of island States 94
3. The so-called "distance principle" 100
Chapter 5. Neither equidistance nor any other method has an obligatory character in continental shelf delimitation 104
A. The trends away from equidistance 104
1. As reflected in the jurisprudence 104
2. As reflected in delimitation agreements 106
Continental shelf boundaries 107
Maritime boundary agreements 110
3. As reflected in the Third Conference on the Law of the Sea 113
B. The progressive disappearance of any distinction between "opposite" and "adjacent" States 114
C. State practice relating to continental shelf delimitation 119
1. The legal relevance of State practice 122
2. Malta's treatment of State practice 125
Delimitation agreements cited by Malta 127
Delimitation agreements in the Mediterranean 130
Italy—Yugoslavia 131
Italy—Tunisia 131
Italy—Spain 132
Italy—Greece 133
Italy—Malta (provisional solution) 133
Delimitation agreements omitted from Malta's Memorial . . 134
PART III. APPLICATION OF THE LAW TO THE FACTS AND RELEVANT CIRCUMSTANCES OF THE PRESENT CASE 139
Chapter 6. The overriding aim of achieving an equitable result in accordance with equitable principles 141
A. The selection and weighing of the relevant circumstances 141
B. The test of proportionality 144
1. Malta's attempt to discredit the role of proportionality 144
2. The role of proportionality 148
3. Malta's introduction of an unacceptable form of proportionality test 151
Chapter 7. The inequity of Malta's proposed solution 153
A. Equidistance ignores the relevant circumstances including those of a geographical character 153
B. The Maltese "trapezium exercise" 164

Page

Chapter 8. The approaches of the Parties to delimitation and an equitable result 167

Submissions 171

Annex. A critique of the "trapezium exercise" 175

1. The Memorial's commentary on the Figure 175
   First element 175
   Second element 175
   Third element 176
2. The trapezium exercise and the equidistance method 177
   (i) The trapezium in fact assumes that the Maltese coast is of equal length to the Libyan coast 178
   (ii) The trapezium assumes a proportionality between the two shelf areas by ignoring areas attaching to State A (Malta) and adding to State B's area (Libya's) areas of shelf which lie beyond the lateral reach of the median line and cannot be said to lie between even the fictitious coasts 179
   (iii) The application of the trapezium construct to the actual area in Figure A of the Maltese Memorial demonstrates that the choice of the relevant Libyan coast was determined solely by the need to accommodate the Maltese claim line 179
   (iv) The trapezium construct involves determining the shelf area of State A by reference, not to the length of its own coast, but to the length of the coast of the opposite State B 180
3. The trapezium applied to other, neighbouring delimitations 181

Annex of Delimitation Agreements

Introduction 184
A. Organization of the material 184
B. Emergent themes 185

Delimitation Agreements

1. United Kingdom (Trinidad and Tobago)—Venezuela 189
2. Chile—Peru 189
3. Ecuador—Peru 189
4. Norway—Soviet Union 189
5. Bahrain—Saudi Arabia 189
6. Guinea-Bissau—Senegal 189
7. Netherlands—Federal Republic of Germany 190
8. Norway—United Kingdom 190
9. Finland—Soviet Union 190
10. Denmark—Federal Republic of Germany 190
11. Netherlands—United Kingdom 190
12. Denmark—Norway 191
13. United Kingdom—Denmark 191
14. Italy—Yugoslavia 191
15. Abu Dhabi—Dubai 191
16. Norway—Sweden 191
17. Iran—Saudi Arabia 191
18. German Democratic Republic—Poland 192
19. Abu Dhabi—Qatar 192

Page
20. Poland—Soviet Union 192
21. Iran—Qatar 192
22. Indonesia—Malaysia 192
23. Mexico—United States 192
24. Australia—Indonesia 193
25. Bahrain—Iran 193
26. Italy—Tunisia 193
27. Federal Republic of Germany—United Kingdom 193
28. Indonesia—Thailand 193
29. Indonesia—Thailand—Malaysia 194
30. Brazil—Uruguay 194
31. Finland—Sweden 194
32. Argentina—Uruguay 194
33. Canada—Denmark 194
34. France—Spain 194
35. Japan—Republic of Korea 195
36. Italy—Spain 195
37. Sudan—Saudi Arabia 195
38. India—Sri Lanka 195
39. Federal Republic of Germany—German Democratic Republic . 195
40. Iran—Oman 195
41. India—Indonesia 196
42. Iran—United Arab Emirates (Dubai) 196
43. The Gambia—Senegal 196
44. Colombia—Ecuador 196
45. Morocco—Mauritania 196
46. Kenya—Tanzania 196
47. Cuba—Mexico 197
48. Colombia—Panama 197
49. India—Maldives 197
50. Colombia—Costa Rica 197
51. Italy—Greece 197
52. Cuba—Haiti 197
53. Cuba—United States 198
54. Colombia—Dominican Republic 198
55. Colombia—Haiti 198
56. United States—Venezuela 198
57. The Netherlands—Venezuela 198
58. India—Indonesia—Thailand 198
59. India—Thailand 198
60. Australia—Papua New Guinea 199
61. Dominican Republic—Venezuela 199
62. Denmark—Norway 199
63. France—Tonga 199
64. Costa Rica—Panama 199
65. France—Mauritius 199
66. United States—Cook Islands 200
67. France—Venezuela 200
68. New Zealand—United States 200
69. France—Saint Lucia 200
70. Iceland—Norway 200
71. France—Australia 200

Page

Documentary Annexes to the Counter-Memorial of the Libyan Arab Jamahiriya 201

Annex 1. Libyan Law No. 66 of 1973 201
Annex 2. Petroconsultants S.A., page 1 of *Foreign Scouting Service, Malta*, July 1980, and page 5 of *Annual Review 1979, Malta*, January 1980 207
Annex 3. Pages 109 and 110 of René-Jean Dupuy, *L'océan partagé* . . 208
Annex 4. Page 341 of Morel, "Caractères hydrologiques des eaux échangées entre le bassin oriental et le bassin occidental de la Méditerranée" 208
Annex 5. Page 6 of Burollet, "Structure and Petroleum Potential of the Ionian Sea" 209
Annex 6. Page 9 of OPEC, *Annual Statistical Bulletin 1981* 210
Annex 7. Government of Malta, page 7 of *Economic Survey*, August 1981 and "Basic Statistics", *Economic Survey*, May 1982 211
Annex 8. Page 1 of *Maltese Development Plan 1981-1985* 213
Annex 9. Page 139 of World Bank, *World Development Report, 1981* 214
Annex 10. Page 54 of Secretariat of Planning, *Summary of the Socio-Economic Transformation Plan 1981-1985* 215
Annex 11. Page 39 of Metwally, *Structure and Performance of the Maltese Economy* 216
Annex 12. Page 84 of *Malta Handbook 1981* and page 125 of *Malta Handbook 1977* 217
Annex 13. Page 149 of Malta, *Guidelines for Progress (Development Plan 1981-1985)* 219
Annex 14. Page 71 of *Development Plan for Malta 1973-1980, Supplement* 220
Annex 15. Agreement between Libya and Malta establishing a fishing company 221
Annex 16. Agreement between Libya and Malta for the setting up of a joint fishing venture 223
Annex 17. Page 9 of Burdon, *Report on the Fishing Industry of Malta* 225
Annex 18. Page 4 of FAO, *Report to the Government of Malta on Fisheries Development* (1970) 226
Annex 19. Pages 73-74 and 76 of Anderson and Blake, "The Libyan Fishing Industry" in Allan (ed.), *Libya since Independence* 228
Annex 20. Pages 5-8, 12, and 29-44 of *Developing Island Countries*, UN doc. TD/B/443/Rev.1 230
Annex 21. Page 9 of the annex attached to UN document A/32/126, 28 June 1977 230
Annex 22. Pages 3 and 4 of Dickinson, *The Equality of States in International Law* 230
Annex 23. Page 510 of Reuter, *Principes de droit international public* 230
Annex 24. Page 287 of the Third United Nations Conference on the Law of the Sea, *Official Records*, Vol. II 230
Annex 25. Pages 87 and 89 of General Assembly, *Official Records, 28th Session, Supplement No. 21 (A/9021)*, Vol. III 231
Annex 26. Pages 232 and 233 of the Third United Nations Conference on the Law of the Sea, *Official Records*, Vol. III 231

Page

Annex 27. Page 84 of the Third United Nations Conference on the Law of the Sea, *Official Records*, Vol. VII 231
Annex 28. Page 200 of the Third United Nations Conference on the Law of the Sea, *Official Records*, Vol. I 231
Annex 29. Page 79 of the Third United Nations Conference on the Law of the Sea, *Official Records*, Vol. IX 231
Annex 30. Pages 210-211 of the Third United Nations Conference on the Law of the Sea, *Official Records*, Vol. III 232
Annex 31. *Limits in the Seas* ; No. 81, 27 December 1978, p. 6 ; No. 83, 12 February 1979, pp. 13-14 ; No. 84, 15 February 1979, p. 5 ; No. 97, 6 December 1982, p. 5 232
Annex 32. Pages 281 to 284 of Gilbert Guillaume, "Les accords de délimitation maritime passés par la France", *Perspectives du droit de la mer à l'issue de la troisième conférence des Nations Unies*, colloque de Rouen de la Société française pour le droit international, 1983 . . 232
Annex 33. UN documents NG7/2/Rev.2 and NG7/10/Rev.2, 28 March 1980 232
Annex 34. Pages 188 and 190 of the United Nations Conference on the Law of the Sea, *Official Records*, Vol. III 233
Annex 35. Page 42 of *New Directions in the Law of the Sea*, Documents, Vol. I 233
Annex 36. Pages 651-652 of Karl, "Islands and the Delimitation of the Continental Shelf : A Framework for Analysis", in *American Journal of International Law*, Vol. 71, 1977 233
Annex 37. Page 132 of de Azcarraga, "España Suscribe, con Francia e Italia, Dos Convenios Sobre Delimitacion de sus Plataformas Submarinas Comunes" in *Revista Española de Derecho Internaciondl*, Vol. XVII ; unofficial translation 233
Annex 38. Pages 742, 749 and 750 of Feldman and Colson, "The Maritime Boundaries of the United States", in *American Journal of International Law*, Vol. 75, 1981 234
Annex 39. Page 426 of Hodgson and Smith, "Boundary Issues Created by Extended National Marine Jurisdiction", in *The Geographical Review*, Vol. 69, No. 4, October 1979 234
Annex 40. Pages 224-225 of Bowett, *The Legal Régime of Islands in International Law* 234
Certification 235

Counter-Memorial of Malta — Contre-mémoire de Malte

INTRODUCTION 239

PART I. THE FUNDAMENTAL IDEAS UNDERLYING THE LIBYAN CASE . . 241

Chapter I. The substance of the Libyan case : Malta disregarded . . . 243
Chapter II. The legal basis of the Libyan case : natural prolongation . 253
Chapter III. The key scientific concepts of the Libyan case : the so-called Rift Zone and the Escarpments-Fault Zone 258

1. The "Rift Zone" 259
2. The Escarpments-Fault Zone 266

Chapter IV. The practice of States disregarded 268

PART II. THE TASK OF THE COURT 271

Page

PART III. CRITIQUE OF LIBYA'S SUBSTANTIVE CASE 277

Chapter I. The principles and rules of international law governing the delimitation of the continental shelf 279

1. The sources of the applicable law 279
2. Libya's legal case 282
   (1) Libya's legal presentation 282
   (2) An assessment of Libya's legal presentation 288
      (a) Entitlement and delimitation: outer limits and boundaries 288
      (b) The delimitation process 291

Chapter II. The legal basis of title and the delimitation process: the concept of natural prolongation 296

1. Libya's conception of natural prolongation is not in accordance with international law 297
   (1) Legal basis of title 297
   (2) Delimitation 301
2. The rules of international law governing the delimitation process: Malta's views 307
   (1) The starting point: an equidistance line 308
   (2) Checking the equitable and reasonable character of the result: relevant circumstances 314
3. Conclusions 316

Chapter III. "Other relevant factors" 317

1. Conduct of the Parties 317
2. Delimitations with third States 324
3. Security interests 328
4. Islands 329
5. Economic and related factors 330

Chapter IV. Proportionality 331

1. The rôle allotted to proportionality in the Libyan Memorial . . . 331
   (1) In principle 331
   (2) In practice 332
   (3) Contradictions in the Libyan argument 336
2. The correct approach to the issue of principle 338
   (1) The proper function of proportionality 338
   (2) Irrelevance of proportionality in terms of coastal lengths in the present case 340
3. The general test of equity establishes the validity of Malta's claim to a median line 340
   (1) Proportionality: rebuttal on the facts 340
   (2) The median line does not call for the refashioning of geography 341
   (3) The Libyan position disregards the principle of non-encroachment 342
4. The equity of the median line confirmed by the practice of States 342
   (1) Delimitations involving island States 342
   (2) Proportionality in relation to delimitations involving peninsular States opposite mainlands 343
5. Conclusion: the lack of pertinence of the ratio of lengths of coasts 345

Page

PART IV. RESTATEMENT OF MALTA'S CASE IN THE LIGHT OF THE LIBYAN MEMORIAL 347

Chapter V. The importance to Malta of the appurtenant continental shelf 349

Chapter VI. The legality and consistency of Malta's position since 1965 350
1. Malta's equidistance line 350
2. The diversity of Libyan lines and substitutes for lines 350

Chapter VII. The geographical framework of the present case 353
1. Introduction: the key elements 353
2. The essential geological continuity of the shelf in the relevant area 353
3. The rôle of coastlines 355
4. The equidistance method normally effects an equitable delimitation of areas dividing opposite States 357

Chapter VIII. The equality of island States in shelf delimitation . . . 358
1. The significance of islands in delimitation 358
2. The generally recognised significance of island States in shelf delimitation 359
3. The link between entitlement and delimitation 359
4. The coastal State's interest in exercising political authority in respect of appurtenant shelf areas 359

Chapter IX. Equidistance as the equitable solution sanctioned by State practice and analogous considerations 362
1. The provenance of the equidistance method in customary law . . 362
2. The general toleration of the international community 363
3. The importance of finality and stability in matters of delimitation 363
4. The practice of States in the Mediterranean region 364

Chapter X. Equitable considerations relevant to the present case . . . 365
1. The rôle of non-geographical considerations 365
2. Malta's special dependence upon sea-bed energy resources 365
3. The requirements of Malta as a developing island country 366
4. The consideration of national security and necessary control of adjacent submarine areas 367
5. The geographical range of fishing activity 368
6. The conduct of the Parties 368
7. The effects of other delimitations between States of the region . . 368
8. Conclusion 369

Chapter XI. The equidistance method satisfies the test of proportionality in the present case 370
1. The rôle of proportionality in the present case 370
2. The significance of the legal framework of the particular delimitation 370
   (a) The principle of non-encroachment 371
   (b) Equitable considerations applicable to the present case . . . 371
   (c) The criterion of distance 371
   (d) The principle of equality of States 371

Page
Chapter XII. The principal elements justifying the equitable solution based upon the method of equidistance 373
Chapter XIII. The implications of the Libyan arguments in the present case 375
Submissions 379

Annexes to the Counter-Memorial of Malta

Annex 1. The importance to Malta of the sea around it 383
Annex 2. Technical Annex : the scientific facts 387
  Introduction 387
  Glossary 388
  Part I. The relevant geomorphological and geological facts concerning the Pelagian Sea 389
    1. Introduction 389
    2. General description 390
      (a) Main geomorphic characters 390
      (b) Morpho-structural framework 391
    3. The northern deeps and plateaux 392
    4. The central trough and ridge system 393
      (a) The limits of the depressed region 394
      (b) The depression proper 394
      (c) The extremities of the depressed zone 395
    5. The eastern tabular units (Melita and Medina Banks) 396
    6. The southern valleys 397
      (a) The Jarrafa Trough 397
      (b) The Misurata Valley 398
      (c) The Tripolitanian Valley 398
    7. The eastern slope 399
      (a) The Malta Escarpment 399
      (b) The Central Escarpment 400
      (c) The Medina Escarpment 400
    8. Limits of the continental margin 401
    9. Conclusion 401
  Part II. Structure and rifting of the sea-bed between Malta and Libya 403
    1. Structural data as per Bathymetric Chart (IBCM) 403
    2. The problem of continuity towards the east of a rifting system 404
    3. Criticism of the rifting with shearing model oblique to the direction of the troughs 405
    4. Recent paleomagnetic data in the Ibleo-Maltese (Ragusa-Maltese) region 405
    5. Comparison of the geotectonic models and the paleomagnetic data 406
    6. Extension in the Pelagian Sea 407
  Works referred to or consulted 409
Annex 3. The Truman Proclamation on the Continental Shelf 412
Annex 4. The Reagan Proclamation on the Exclusive Economic Zone 412
Annex 5. Libyan Concession NC 53 413

Page

Annex 6. (1) Denmark-Norway Maritime Delimitation Agreement, 8 December 1965 ; (2) Exchange of Notes constituting an Agreement between Denmark and Norway amending the Agreement of 8 December 1965 concerning the delimitation of the continental shelf, 24 April 1968 416

Annex 7. Iran-Qatar Maritime Delimitation Agreement, 20 September 1969 416

Annex 8. Denmark-United Kingdom Maritime Delimitation Agreements : (1) Agreement of 3 March 1966 ; (2) Agreement of 25 November 1971 416

Annex 9. Iran-Oman Maritime Delimitation Agreement of 25 July 1974 416

Annex 10. Australia-Papua New Guinea Maritime Boundary Agreement, 18 December 1978 416

Certification 417

Application for permission to intervene — Requête à fin d'intervention

REQUÊTE À FIN D'INTERVENTION DU GOUVERNEMENT DE L'ITALIE 421

I. L'affaire *Libye/Malte* et l'intérêt d'ordre juridique de l'Italie . . . 421
  A. Objet de l'affaire *Libye/Malte* 421
  B. L'« intérêt d'ordre juridique » de l'Italie (article 62 du Statut de la Cour) 422
II. L'objet précis de l'intervention 424
III. Base de compétence de la Cour 425
IV. Conclusion 426

Written observations on the Application for permission to intervene — Observations écrites sur la requête à fin d'intervention

OBSERVATIONS OF THE SOCIALIST PEOPLE'S LIBYAN ARAB JAMAHIRIYA ON THE APPLICATION FILED BY ITALY FOR PERMISSION TO INTERVENE . . . 429

Introduction 429
I. General observations 429
II. Italy's alleged interest of a legal nature that may be affected by the *Libya/Malta* case 431
III. The "precise object" alleged in Italy's Application to intervene . . 433
IV. The alleged basis of the Court's jurisdiction 434
V. Conclusion 437

OBSERVATIONS BY MALTA UPON THE APPLICATION BY ITALY TO INTERVENE 438

I. Summary 438
II. The defects in the Italian position 438
  A. The vagueness of the Italian claim 438
  B. The absence of any prior expression by Italy of any relevant claims 439
III. The consequences of the above defects 442
  A. The inadmissibility of the Italian Application 442
  B. Italy's Application does not satisfy the requirements of the relevant Articles of the Statute and the Rules of the Court . . 444
    1. The Application does not sufficiently specify the nature of the Italian interest 444

Page
2. The Application does not sufficiently specify the precise object of the intervention 444
(a) Italy makes "object" dependent upon "interest" 444
(b) Italy's misapprehension regarding the nature and effect of the Court's eventual judgment 445
(c) The object of Italy's Application is obscure 446
C. Italy is now estopped from asserting its claim against Malta by way of an application to intervene 447
IV. Italy has no jurisdictional link with either Party 448
V. Conclusion 448

Annexes to the Observations by Malta

Annex 1. Note Verbale from the Embassy of Italy dated 8 November 1965 449
Annex 1A. Translation of Annex 1 449
Annex 2. Note Verbale from the Ministry of Commonwealth and Foreign Affairs dated 31 December 1965 450
Annex 3. Note Verbale from the Embassy of Italy dated 27 June 1969 451
Annex 3A. Translation of Annex 3 451
Annex 4. Note Verbale from the Embassy of Italy dated 17 October 1969 452
Annex 4A. Translation of Annex 4 452
Annex 5. Note Verbale from the Ministry of Commonwealth and Foreign Affairs dated 23 October 1969 453
Annex 6. Note Verbale from the Embassy of Italy dated 22 December 1969 454
Annex 6A. Translation of Annex 6 454
Annex 7. Note Verbale from the Embassy of Italy dated 20 January 1970 455
Annex 7A. Translation of Annex 7 455
Annex 8. Note Verbale from the Ministry of Commonwealth and Foreign Affairs dated 24 January 1970 456
Annex 9. Note Verbale from the Italian Ministry of Foreign Affairs dated 29 April 1970 457
Annex 9A. Translation of Annex 9 457
Annex 10. Note Verbale from the Embassy of Italy dated 11 May 1970 458
Annex 10A. Translation of Annex 10 458
Annex 11. Note Verbale from the Ministry of Commonwealth and Foreign Affairs dated 30 May 1970 459
Annex 12. Note Verbale from the Ministry of Commonwealth and Foreign Affairs dated 15 July 1970 460
Annex 13. Note from the Embassy of Italy dated 14 August 1970 . . . 461
Annex 13A. Translation of Annex 13 461
Annex 14. Notes of meeting between Ambassador Varvesi and the Secretary, Ministry of Commonwealth and Foreign Affairs, on 19 June 1975 462
Annex 15. Note Verbale from the Ministry of Commonwealth and Foreign Affairs dated 14 November 1975 466
Annex 16. Note Verbale from the Maltese Ministry of Foreign Affairs dated 25 August 1978 467

Page

Annex 17. Note Verbale from the Embassy of Malta dated 25 September 1978 468
Annex 18. Note Verbale from the Embassy of Malta dated 6 November 1978 469
Annex 19. Note Verbale from the Italian Ministry of Foreign Affairs dated 16 March 1981 470
Annex 19A. Translation of Annex 19 470
Annex 20. Note Verbale from the Embassy of Malta dated 6 April 1981 471
Annex 21. Note Verbale from the Italian Ministry of Foreign Affairs dated 10 January 1983 472
Annex 21A. Translation of Annex 21 472
Annex 22. Note Verbale from the Embassy of Malta dated 2 March 1983 473
Annex 23. Application by AGIP in 1973 for concessions by Malta in areas immediately to the north of the Malta-Libya equidistance line 474
Annex 24. Map showing Maltese concessions and Malta-Libya equidistance line 477
Certification 478

Oral arguments on the Application for permission to intervene — Plaidoiries relatives à la requête à fin d'intervention

OPENING OF THE ORAL PROCEEDINGS 483

DÉCLARATION DE M. GAJA (ITALIE) 483

ARGUMENT OF MR. ARANGIO-RUIZ (ITALY) 491

Italy's Application for permission to intervene fulfils the main condition for intervention set out by Article 62 of the Statute of the Court 491
Italy has an interest of a legal nature 491
The delimitation of a number of zones claimed by Malta concerns actually Italy and Libya only, or Italy, Libya and Malta 495
Equidistance is not the sole nor even the main criterion in matters of continental shelf delimitation and, accordingly, Italy enjoys substantial rights in some of the areas in dispute between Libya and Malta 498
This legal interest of Italy may be affected by the decision in the case 499
Articles 62 and 63 of the Statute of the Court: Italy applies for permission to intervene under Article 62 500
The Court will not only decide on the principles and rules of international law applicable, but will also determine the delimitation of the areas in dispute 501
The Court will be led to decide by implication of some of the conflicting legal claims between Italy and Libya and Italy and Malta 502
The abstract nature of the legal interest which motivated Malta's Application for permission to intervene in the *Tunisia/Libya* case 503
Italy has a direct and precise legal interest which will be affected by the operative part of the Court's decision 505

PLAIDOIRIE DE M. MONACO (ITALIE) 508

L'objet de l'intervention de l'Italie 508
L'objet de l'intervention de l'Italie : prise en considération par la Cour des intérêts de nature juridique de l'Italie relatifs à des zones revendiquées par les parties principales 511

Page

L'Italie a en vue un objet limité par rapport au procès principal 513
La demande d'intervention de l'Italie est différente de la demande abstraite présentée par Malte dans l'affaire *Tunisie/Libye*, car l'Italie demande à être admise, directement et concrètement, comme Partie intervenante 513

PLAIDOIRIE DE M. SPERDUTI (ITALIE) 516

L'absence de différend préalable avec les parties à l'instance n'est pas un motif d'irrecevabilité 516
Préexistence d'un différend entre l'Italie et Malte: historique des discussions entre ces deux pays sur la délimitation du plateau continental 517
Le principe dit du différend préalable n'est pas applicable dans le cas présent 519
Réfutation de l'objection de la Libye: l'absence de différend préalable ne doit pas exclure l'Italie d'une procédure qui risque d'aboutir à son égard à une injustice 520
L'exception d'*estoppel* invoquée par Malte n'est pas fondée 520

PLAIDOIRIE DE M. CONTI (ITALIE) 524

Réfutation des objections de la Libye relatives à la base de compétence: signification de l'article 81, paragraphe 2 *c)*, du Règlement de la Cour 524
L'article 62 du Statut de la Cour définit la base de compétence de manière complète et autonome 525
Toute restriction de la portée de l'article 62 serait contraire à l'esprit du Statut et à la mission de la Cour 528
Indépendance de l'article 62 par rapport à l'article 36 529
Différences entre un procès autonome et une demande par voie d'intervention 529
La juridiction de la Cour est ouverte aux Etats tiers: à une compétence principale en vertu de l'article 36 correspond nécessairement une compétence dérivée en vertu des articles 62 ou 63 530
Le dépôt du compromis par les parties principales entraîne l'acceptation de toutes les dispositions du Statut de la Cour, et en particulier de l'article 62 530
La requête de l'Italie ayant trait à l'objet du litige principal, l'article 62 du Statut constitue une base de compétence suffisante 533

PLAIDOIRIE DE M. VIRALLY (ITALIE) 534

L'intervention est un droit qui s'exerce sous le contrôle de la Cour et conformément à son Statut 534
Difficultés d'interprétation de la base de compétence offerte par l'article 62 535
Les trois objections de la Libye 536
Les deux catégories d'objections possibles à la thèse italienne relative à la base de compétence offerte par l'article 62 537
Les objections de texte 538
Réfutation de l'objection tirée de la différence de rédaction entre les articles 62 et 63 du Statut de la Cour 538
Réfutation de l'objection tirée de l'article 81, paragraphe 2 *d)*, du Règlement de la Cour 540
Les objections relatives à l'esprit du Statut 542
La place de l'article 62 dans le Statut 543

Page

Le principe suprême du consentement des Etats: l'article 62 n'apporte pas une exception à l'article 36 du Statut 544
Absence de contradiction entre le principe du consentement des Etats et l'article 62 545
L'institution de l'intervention: son originalité en droit international et ses différentes significations 546
L'article 62 offre une base de compétence suffisante 549
Réfutation des critiques fondées sur les principes de l'égalité des parties devant la Cour et de la réciprocité des droits et des obligations des Etats parties au Statut de la Cour 550
Nécessité de prendre en considération les droits éventuels des Etats tiers 552
L'Italie a un intérêt d'ordre juridique portant sur certaines zones de plateau continental en litige entre les parties principales 555

STATEMENT BY MR. EL-MURTADI SULEIMAN (LIBYA) 560

PLAIDOIRIE DE M. COLLIARD (LIBYE) 563

Partie préliminaire. Attitude surprenante de l'Italie 563
1. L'absence de négociation 563
2. Une requête présentée tardivement 567
Première partie. Analyse du compromis 568
1. Les différences entre le compromis de 1976 et le compromis de 1977 entre la Libye et la Tunisie 569
2. Le caractère bilatéral des délimitations 571
Seconde partie. Caractère relatif des délimitations et garantie pour les Etats tiers 573
1. Le caractère relatif des délimitations 573
2. Etude de l'article 59 du Statut et son utilisation par l'Italie 575
Sens de l'article 59 576
Utilisation de l'article 59 par l'Italie 577
Conclusion: les intérêts de l'Italie ne sont pas menacés 579

ARGUMENT OF SIR FRANCIS VALLAT (LIBYA) 581

Italy's Application is vague and ambiguous 581
The alleged legal interest of Italy is not sufficient to justify the permission to intervene 582
This alleged legal interest would not be affected by the decision of the Court 585
The object of Italy's Application is not clear 587

PLAIDOIRIE DE M. GRISEL (LIBYE) 591

Le problème de la compétence de la Cour 591
I. Les principes 593
1. La définition des principes découle directement du chapitre II du Statut 593
La juridiction de la Cour dépend d'un double consentement des parties: l'adhésion au Statut et l'acceptation d'une base de compétence 593
L'acceptation de la compétence de la Cour ne se présume pas et doit s'exprimer de façon claire 594

Page
2. L'application du principe du consentement au cas de l'intervention . . . 595
La place de l'article 62 dans le Statut, l'existence de l'article 81, paragraphe 2 *c)*, du Règlement et les rapports juridiques entre le Statut et le Règlement de la Cour confirment la nécessité d'une base de compétence . . . 596
L'existence d'une base de compétence est indispensable pour le respect et l'égalité des Parties et de la réciprocité des droits et obligations entre les Etats . . . 598
L'argumentation italienne n'établit pas l'existence d'une base de compétence vis-à-vis de la Libye . . . 600
II. L'examen de l'argumentation italienne . . . 600
L'article 62 n'a pas trait à la compétence . . . 600
Signification de l'article 81, paragraphe 2 *c)*, du Règlement . . . 601
Distinction entre la compétence au fond créée par l'article 36 du Statut et la compétence incidente créée par l'article 62 . . . 602
Réfutation de la thèse italienne suivant laquelle une base de compétence n'est pas requise au motif que l'Etat intervenant ne deviendrait pas partie à l'instance principale : l'Etat intervenant devient nécessairement partie . . . 603
Un compromis conclu entre deux Etats ne crée pas une compétence implicite en vue de l'intervention d'un Etat tiers . . . 607
La prétendue analogie entre l'article 62 et l'article 63 du Statut 609

STATEMENT BY DR. MIZZI (MALTA) . . . 612

ARGUMENT OF MR. LAUTERPACHT (MALTA) . . . 618
The philosophy of the Court in the matter of intervention . . . 618
A potentially multilateral situation does not preclude a bilateral settlement . . . 619
Italy's conduct demonstrates acquiescence to the equidistance method 622
History of discussions between Italy and Malta . . . 622
Italy's belated concern and virtually unidentifiable claim . . . 625
The absence of prior dispute . . . 628
So far as the nature of Italy's alleged interest is concerned, the Italian Application is indistinguishable from the Maltese Application of 1981 631
The Court's decision cannot affect Italy's rights . . . 631
There is no effective difference between Italy's Application and that of Malta in 1981 . . . 633
The conclusions of the Court in 1981 are equally applicable to Italy's Application . . . 636

DÉCLARATION DE M. GAJA (ITALIE) . . . 638

RÉPLIQUE DE M. VIRALLY (ITALIE) . . . 639
Caractères fondamentaux de la requête de l'Italie . . . 640
La requête à fin d'intervention constitue l'exercice d'un droit légitime 640
La protection offerte par l'article 59 du Statut est insuffisante en l'espèce 641
Impossibilité pour la Cour de statuer sur la délimitation Libye-Malte sans tenir compte des prétentions de l'Italie . . . 644

QUESTION BY JUDGE ODA . . . 646

Page

QUESTION DE M. DE LACHARRIÈRE 646

RÉPLIQUE DE M. VIRALLY (ITALIE) *(suite)* 647

I. L'objet de la requête de l'Italie : protéger ses droits et faciliter à la Cour l'exercice de sa fonction judiciaire 647

Si sa requête est admise, l'Italie sera Partie intervenante 649

II. L'intérêt d'ordre juridique de l'Italie est clair et simple 651

L'Italie a fourni toutes les justifications nécessaires à ce stade de la procédure 653

III. La base de compétence 654

Le principe du double consentement est inapplicable au cas de l'intervention 655

L'intervention italienne remplit toutes les conditions posées par le Statut 655

DÉCLARATION DE M. GAJA (ITALIE) 658

STATEMENT BY MR. EL-MURTADI SULEIMAN (LIBYA) 659

STATEMENT BY DR. MIZZI (MALTA) 660

CLOSING OF THE ORAL PROCEEDINGS 661

READING OF THE JUDGMENT 662

COUNTER-MEMORIAL
OF THE LIBYAN ARAB JAMAHIRIYA

CONTRE-MÉMOIRE
DE LA JAMAHIRIYA ARABE LIBYENNE

VOLUME I

INTRODUCTION

1. This Counter-Memorial is filed in accordance with Article II of the Special Agreement signed by the Socialist People's Libyan Arab Jamahiriya (hereinafter referred to as "Libya"[1]) and the Republic of Malta (hereinafter referred to as "Malta") on 23 May 1976 and the Order made by the President of the Court in the present case on 26 April 1983 fixing 26 October 1983 as the time limit for the filing of Counter-Memorials by the Parties. The English text of the Special Agreement is set out at pages 2 and 3 of the Libyan Memorial filed on 26 April 1983 in the present proceedings (the "Libyan Memorial").

General comments

2. The purpose of this Introduction is to provide some general comments on the Memorial submitted by Malta (the "Maltese Memorial") and a link between those comments and the subsequent parts of this Counter-Memorial. The general comments would not be required in most cases but are made necessary by the nature of the Maltese Memorial. At first sight, there is a certain appearance of logic and plausibility about the presentation made on behalf of Malta. It is, indeed, executed with considerable skill. However, on closer examination, it is found to be largely based on irrelevancies, to contain assertions that are either only partially correct or are distortions and to argue, with an appearance of logic, that the basic thesis or objective of Malta (*i.e.*, the use of the "median line") is acceptable and established law. In these circumstances, it is necessary to make some general comments on the content of the Maltese Memorial.

3. There are four general aspects of the Maltese Memorial which call for comment at this stage. They are:

(1) Malta's economic plea;

(2) Malta's idea of "relevance";

(3) Malta's claim to be in a "normal" and "simple" situation; and

---

[1] The term "Libya" refers to the State of Libya and its political institutions, whatever their form at the relevant time, and as may appear from the context also the territory which now belongs to the Socialist People's Libyan Arab Jamahiriya. It should also be noted that the "Libyan Arab Republic" as referred to in the Special Agreement became the Socialist People's Libyan Arab Jamahiriya on 2 March 1977.

30

(4) Malta's idea of analogous State practice.

Malta's economic plea

4. Malta's economic plea is found at the beginning of its Memorial and is presented as the foundation of its claim based on the use of the equidistance method. This is the essential mainspring of Malta's case as stated in the Introduction to its Memorial. Malta's plea, made "at the very outset", is for a generous allocation of continental shelf because of its lack of land-based resources. It is a plea for distributive justice, which, as the Memorial itself seems to admit[1], is not relevant to continental shelf delimitation. The politico/economic plea and the promise of later support is found in these words:

> "Though some of the details will be repeated later within the framework of the systematic exposition of the *geographical, economic* and *geological* circumstances of the Parties, it must be stated without delay that the present case is really about access to resources .... The investigations so far carried out suggest that the most promising areas for the discovery and production of oil lie in or near the regions of Malta's southern equidistance line. Although there are also other cogent reasons, this is the fundamental reality which underlies Malta's opposition to Libya's assertion of rights north of that equidistance line[2]."

5. There is little on geography or geology in the Maltese Memorial but there is much about economics. Yet the economic circumstances of the Parties, to which such a prominent place is given by Malta in the Introduction of its Memorial, are not, according to the jurisprudence of the Court, considered to be relevant to delimitation. Therefore, it is most remarkable that Malta should rest its assertion of rights up to the "Equidistance Line" on extraneous economic reasons. This basic assertion implicitly rejects a delimitation of the continental shelf areas appertaining to the Parties on the basis of "equitable principles" taking into account the circumstances relevant to the delimitation. Moreover, the assertion does not lead to any logical result for purposes of delimitation. It is astonishing that nowhere does Malta attempt to show how economic considerations lead to the conclusion that the equidistance method would result in an equitable delimitation of continental shelf areas in the present case.

---

[1] These admissions seem to be implicit in the quotations from the *Anglo-French Arbitration*, and the *North Sea* cases given in paras. 116 and 130 of the *Maltese Memorial*. In para. 129, the *Maltese Memorial* also has a reference to the Judgment in the *Tunisia/Libya* case, (*Continental Shelf (Tunisia/Libyan Arab Jamahiriya), Judgment, I.C.J. Reports 1982*, p. 76, para. 104). It might have added the final sentence of para. 71 of that Judgment which reads:

> "While it is clear that no rigid rules exist as to the exact weight to be attached to each element in the case, this is very far from being an exercise of discretion or conciliation; nor is it an operation of distributive justice."

[2] *Maltese Memorial*, para. 4. [Italics added.]

6. Although the economic considerations of the Parties are irrelevant to the question of delimitation, the assertions made in the Maltese Memorial are in general either misleading or wrong and cannot be left unanswered. It is necessary to restore the balance, and to do this the presentation of some detail is unavoidable[1]. Malta has made considerable play with the importance of the case for Malta, but it is at least as important to Libya.

Malta's idea of "relevance"

7. It is difficult to discern what test or criterion the Maltese Memorial applies to determine what is relevant and what is not. The Memorial seems to emphasise factors which are without relevance to the question of continental shelf delimitation and to minimise or ignore factors which are clearly relevant. It attaches more importance to the attempt to create sympathy for Malta than to an examination of what is relevant to delimitation. Thus, in addition to economic considerations, there is an appeal to political factors, such as neutrality[2], the concept of an island developing country[3] and the fact that Malta is an island State rather than a mainland State[4]. There is also an appeal to marginal factors, such as Maltese fisheries and security interests, which so far as Libya is concerned carry no weight in the present case. In this connection, the almost total dismissal by the Maltese Memorial of geomorphology and geology is extraordinary, and perhaps most remarkable is the scant treatment of geography which stresses the distance and the opposite relationship between Malta and Libya but chooses to suppress the vital factor of coastal lengths (and in so doing the test of proportionality)[5].

Malta's claim to be in a "normal" and "simple" situation

8. A basic defect in the argument presented in the Maltese Memorial is that it starts from two ill-founded presumptions. The first is a presumption of law that the equidistance method is *per se* equitable as between "opposite States" in a "normal" situation and therefore must be equitable in the case of Libya/Malta. There is no warrant for such a presumption which has never been accepted in jurisprudence[6] or in the general opinion of States[7], and is not supported by the practice of States[8] which occupies so much of the Maltese Memorial. Basing itself on this presumption of law, Malta is forced to depart from the well-established principle that each case of continental shelf delimitation has to be considered and decided on

---

[1] See Chapter 3, Section A, below.
[2] See Chapter 3, Section B.2., below.
[3] See Chapter 3, Section A.4., below.
[4] See Chapter 3, Section B.3., and Chapter 4, Section B.2., below.
[5] See Chapters 2 and 6, below.
[6] See Chapter 5, Section A.1., below.
[7] See Chapter 5, Sections A.2. and A.3., below.
[8] See Chapter 5, Section C, below.

the basis of its own facts and circumstances. The second ill-founded presumption is one of fact; for Malta assumes, as a fact, that the Libya/Malta relationship is both "normal" and "simple". To preserve this presumption, the Maltese Memorial glosses over the most important factors of geography, geomorphology and geology[1]. The truth is that no two cases are identical and it is not easy to find cases which are even basically similar geographically to that of the Libya/Malta situation. Moreover, the Libya/Malta relationship is particularly exceptional. It is distinguished by features such as the fact that Malta is a group of small islands, is located in a confined area of the Mediterranean and has a very short length of coast facing Libya, whereas Libya has a long coast facing northward across the Central Mediterranean[2]. It is also distinguished by the features of the sea-bed in the area around Malta[3]. It may truly be said that to characterise the situation as "normal" and "simple" is a distortion, not merely of geography, but of nature itself.

Malta's idea of analogous State practice

9. The characterisation of the Libya/Malta situation as "normal" is essential to the appeal to "analogous" State practice in the Maltese Memorial. It enables the Memorial to gloss over the difference between the Libya/Malta situation and the situations in the delimitation agreements mentioned in this Memorial. Apart from this basic defect, the examination of the delimitation agreements in the Maltese Memorial is deficient in three important respects. It does not analyse the agreements in order to ascertain what circumstances may have been taken into account and it does not discuss the many individual cases involving States with opposite coasts or islands where equidistance did not form the basis of delimitation. Nor does it compare the situation of Malta with the situation in each of the cases to which the agreements relate. It also fails to establish what is regarded as "normal" in the examples cited. These are matters which will be considered in detail later in the present Counter-Memorial[4]. The appeal to "analogous" State practice is also deficient in another respect: it is far from exhaustive. Many delimitation agreements are not cited and it is impossible to draw any general conclusion from those examples cited by Malta. Even an exhaustive examination of delimitation agreements so far concluded, such as Libya has attempted, cannot produce ready solutions to the problems that have to be solved in future delimitations and dictate what in each particular case should be regarded as equitable. This limited utility is inevitable in any examination of existing delimitation agreements. However, having regard to the partial treatment of so-called State practice in the Maltese Memorial, it has been considered

---

[1] See, for example, paras. 114, 131, 215 and 272 of the *Maltese Memorial*.

[2] See Chapter 2, Section B, below.

[3] See Chapter 2, Section C, below.

[4] See Chapter 5, Section C, below.

necessary to set out all the known agreements as exhaustively as possible. To avoid encumbering this Counter-Memorial unduly, this has been done in a separate *Annex* of delimitation agreements[1]. In brief, in the light of the Maltese Memorial, it is necessary:

(a) to make a closer examination of the examples cited in that Memorial, and

(b) to examine also the remainder of existing delimitation agreements[2].

Arrangement of this Counter-Memorial

10. It would not be feasible or helpful to examine every statement and contention in the Maltese Memorial. A point-by-point commentary would become tedious and confusing. For this reason, no attempt has been made to deal explicitly with every point in the Maltese Memorial on which there might be some difference between the Parties. This does not imply, however, Libyan acceptance of points not dealt with. Where there is no direct comment in this Counter-Memorial, Libya reserves its position in case it should be necessary to comment later. In this Counter-Memorial, Libya continues its effort to contribute to the finding of an equitable solution in accordance with international law. Nevertheless, examination of the Maltese Memorial inevitably involves some criticism which may appear sharp. This implies no animosity on the part of Libya which is, and has been throughout, anxious to maintain the most friendly relations with Malta.

11. In an attempt to curtail the length of the Counter-Memorial, Chapters 1 and 2 dealing with the facts also include comments which might have been put into later chapters on the law and its application. In this way, some repetition is avoided. Also, bearing in mind the need to keep the Counter-Memorial as short as possible, no chapter has been included on the interpretation of the Special Agreement since, having regard to the treatment of this aspect of the matter in the Maltese Memorial, there is no need to add to what is said in the Libyan Memorial[3]. In general, Libya respectfully invites the Court to regard its Memorial and this Counter-Memorial as a unified presentation of its case, since the fact that portions of the Memorial have not been repeated means that they have been maintained and not abandoned by Libya. One substantial addition, however, has been made. For reasons explained above, it has been necessary to add a fairly substantial chapter, Chapter 3, on "Economic and Other Considerations Introduced by Malta".

---

[1] See Vol. II of this Counter-Memorial.

[2] See Chapter 5, Section C, below. See also the *Annex* of delimitation agreements.

[3] See, in particular, *Libyan Memorial*, Chapter 5, which expresses Libya's position on this matter.

12. The Table of Contents to the Counter-Memorial gives sufficient indication of the subjects covered by Part I—"The Factual Elements", Part II—"The Law", and Part III—"Application of the Law to the Facts and Relevant Circumstances of the Present Case". An *Annex* dealing in somewhat technical terms with the "trapezium exercise" has been included at the end of this Volume I. The *Annex* of delimitation agreements, to which special importance is attached by Libya, is found in Volume II, Parts 1 and 2. Volume III contains the *Documentary Annexes* and a pocket section for maps. Finally, it is desired to stress Libya's aim of achieving an equitable result and the views developed in this connection are in Chapters 6 and 8 in Part III. Chapter 8 also contains a comparison of the cases presented by the Parties and of the approaches of the Parties to delimitation and an equitable result.

PART I

THE FACTUAL ELEMENTS

CHAPTER 1

THE BACKGROUND OF THE DISPUTE

Introduction

1.01 This Chapter is concerned with certain aspects of the history of events which led to the emergence of the dispute and its submission to the Court. It is mainly directed to events which occurred before the signature of the Special Agreement in May 1976. To a certain extent, the accounts of those events by the two Parties in their Memorials are on similar lines. Libya has, however, been at pains to set out the relevant facts as objectively as possible in Chapter 4 of its Memorial. It is not intended to examine here every detail of divergence between the two Memorials, but where the facts as stated in the Maltese Memorial differ from those as stated in the Libyan Memorial[1], Libya maintains its position as stated in the Libyan Memorial.

1.02 Nevertheless, having regard to certain contentions made or insinuated in the Maltese Memorial, it is considered necessary to offer some clarification. This applies particularly to Malta's "*status quo*" contention, the total invalidity of which is apparent, not only on the face of the Maltese Memorial itself, but also in the light of the factual history.

1.03 In order to put the matter into proper perspective, a brief resumé of certain aspects of that history is given below in Sections A, B, C and D of this Chapter[2]. It must, however, be observed at once that the *status quo* contention cannot be taken seriously. It is not consistent with the facts and is not explained or supported by any reasoned legal argument. There is no reliance on estoppel or preclusion or agreement (express or implied). This is not surprising because the required elements are lacking. It should be noted that, while the hollowness of the *status quo* contention is apparent from the facts and so might be thought not to justify the detailed treatment in the following Sections of this Chapter, these Sections have an important bearing on other aspects of the case.

A. Legislation

1.04 The contention of Malta, based on an alleged *status quo*, emerges in Chapter IV of the Maltese Memorial entitled "Malta's Equidistance Line". In this connection, Malta has chosen to ignore the effect of the

---

[1] *Libyan Memorial*, Chapter 4; see also Chapter 9, Section C.

[2] The sub-titles are as follows:

Section A. Legislation (paras. 1.04-1.07).
Section B. Exchanges Between the Parties in 1972-73 (paras. 1.08-1.13).
Section C. Petroleum Activities of the Parties (paras. 1.14-1.22).
Section D. The "No-Drilling" Understanding (paras. 1.23-1.27).

Libyan legislation of 1955 which patently did not respect "the equidistance line" for the northern boundary of Libyan continental shelf jurisdiction in the direction of Malta[1].

1.05 In Chapter IV, under the sub-title "1. Malta's Delimitation", it is claimed that the Continental Shelf Act 1966[2] "established a median line delimitation". This was an entirely unilateral act[3] and could not, in itself, "establish" a "delimitation" of the continental shelf as against other States in the area. Such a step would be contrary to the fundamental principle that delimitation is to be effected by agreement. This principle is incorporated in both paragraphs 1 and 2 of Article 6 of the 1958 Convention on the Continental Shelf, to which Malta (but not Libya) is a party. It would, therefore, be very surprising if the 1966 Continental Shelf Act were to purport "unilaterally" to establish a median line boundary. On the contrary, Section 2 of the Act itself put agreement first and the median line second. The section provided: "So however that where in relation to states of which the coast is opposite that of Malta it is necessary to determine the boundaries of the respective continental shelves, the boundary of the continental shelf shall be that determined by agreement between Malta and such other state or states ...". This provision at least contemplated an attempt at agreement with States with opposite coasts. It is true that the above quotation continues "or, in the absence of agreement, the median line...", but this cannot be read as overriding the obligation to seek agreement or to negative the prospect of agreement held out by the earlier part of the provision. On the face of it, the 1966 Act did not purport to establish the delimitation line between the continental shelves of Malta and Libya. This could not be done by a mere reference to the "median line" especially where, as in this instance, the extent of the Maltese continental shelf was expressly limited by the "exploitability" test: nor can the provision for "agreement" be brushed aside (as paragraph 106 of the Maltese Memorial tries to do) by saying that it "merely reflected the possibility of alterations derived from the necessary adjustments of a negotiated settlement".

1.06 From the international point of view, it cannot be seriously contended that the 1966 Continental Shelf Act "unambiguously" established a median line boundary[4]. If so, the necessary implication would be that the unilateral act of Malta is superior to the requirement of settlement by agreement under international law. That this is the present intention of Malta seems to be confirmed by the remarkable sentence at the end of paragraph 106 of the Maltese Memorial which reads: "The contingency of the negotiated settlement of such a controversy cannot be said to impugn the legal validity of the median line as constituting the *status quo*". The plain fact is, however, that the 1966 Continental Shelf Act, which clearly provided for establishment of the "boundary" by agreement, did not call for any reaction on the part of Libya. If there were any doubt on that point it would be removed by the subsequent conduct of Malta as demonstrated by its anxiety to secure the agreement of Libya to "Malta's Equidistance Line" as eventually shown on a map produced to Libyan experts on 12/13 April 1972. Moreover, according to paragraph 107 of the Maltese Memorial, it was not until April 1973 that Malta took steps which, in its view, "involved the implementation of the median line delimitation established in Malta's legislation of 1966". It may also be observed that Malta did not notify the 1966 Continental Shelf Act to Libya and gave Libya no notification of L.N.41 of 24 April 1973 until a copy was communicated by the Maltese Note Verbale dated 8 August 1974[1].

---

[1] *Libyan Memorial*, paras. 4.20-4.23. The 1955 Petroleum Law and Petroleum Regulation No. 1 are found at *Libyan Memorial*, Annexes 32 and 33.

[2] For text see *Libyan Memorial*, Annex 15.

[3] Indeed, this is acknowledged by Malta in para. 106 of its Memorial by the express reference to "unilateral measures". This is where the *status quo* contention first emerges: it is related to alleged facts and conclusions that are misleading, inaccurate or erroneous found in paras. 32, 34, 35, 36, 64 and 65 of the *Maltese Memorial*.

[4] Para. 202 of the *Maltese Memorial*, where the *status quo* point seems to emerge again, does not actually go that far. It says, "The provisions of the Act (in section 2) stated unambiguously that, in the absence of agreement, the continental shelf boundary 'in relation to states of which the coast is opposite that of Malta ... shall be ... the median line'".

1.07 Thus it is clear that there never was any foundation for the statement made in paragraph 203 of the Maltese Memorial (and reflected in paragraph 272(k)) that "the first disturbance of the *status quo* constituted by Malta's legislation of July 1966 took place in September 1974, and resulted from a Libyan initiative". No such contention was relied upon by Malta throughout the discussions with Libya. It is believed to appear for the first time in the Maltese Memorial. Moreover, it is inconsistent not only with the Maltese legislation but also with subsequent history, some aspects of which are discussed below.

B. Exchanges Between the Parties in 1972-73

1.08 It seems to be common ground that discussions between the Parties began in July 1972[2]. However, the accounts diverge immediately. The Libyan Memorial in paragraphs 4.30 to 4.32 gives the facts concerning an important meeting in Malta on 11 July, as well as the meetings on 12 and 13 July, but the Maltese Memorial (paragraphs 63 and 64) makes no mention of the meeting on 11 July. As may be seen from the minutes of that meeting and the memorandum handed by the Maltese to the Libyan delegation[3], the discussions of 11 July were wide-ranging and the "median line" was only one of several subjects raised on that occasion. It was not on the agenda. It was raised by Malta but not discussed in substance.

---

[1] *Libyan Memorial*, Annex 53. See also para. 1.12 and Section C, below. Moreover, no concession was granted in this area covered by L.N. 41 by Malta until 1974.

[2] Negotiations with Tunisia began several years earlier.

[3] *Libyan Memorial*, Annexes 37(a) and 37(b).

1.09 In paragraph 36 of its above-mentioned memorandum the Maltese Government suggested "that discussions on the median line be held in Malta[1]." The response of the Libyan delegation appears from the minutes[2]. They explained that there was a Standing Committee in Libya dealing with the subject and suggested that an approach be made to that Committee. The last paragraph of this part of the minutes puts the position succinctly. It states:

> "The Maltese delegation were prepared to sign a bilateral agreement with Libya on the Median Line. The Libyan Delegation stated that this was not possible and that they would be sending a delegation to Malta to negotiate the necessary agreement. The Malta Side agreed to make available the co-ordinates of the Median Line."

The last sentence makes it clear that the co-ordinates for "Malta's Equidistance Line" had not previously been communicated to Libya. They were in fact communicated to the Libyan visitors on the following day, *i.e.*, on 12 July 1972.

1.10 At this point, some clarification is necessary. The members of the Libyan delegation on 12/13 July were not the same as the 11 July delegation. They were Mr. Suleiman Atteiga, Mr. Muftah Unis and Mr. Ahmed Garta who had been to Monaco and Italy, and had come on to Malta. Their instructions were to gather information on the question of continental shelf delimitation[3]. So far as the Libyan delegation was concerned, the discussions on 12 and 13 July were of an exploratory character and they foresaw the possibility of a further meeting being held in September. No commitment whatever was given to accept "Malta's Equidistance Line" and no suggestion was made on behalf of Malta that it was established as the then existing *status quo*. In these circumstances, it is not surprising that discussion focussed on the technical question of the use of Filfla as a basepoint which certainly required some explanation, and it was natural that the Libyan delegation should wish to reserve examination of the Maltese co-ordinates for the appropriate experts[4]. This could in no way be interpreted as acceptance of the Maltese proposal, which would have been beyond their authority as was made amply plain to the Maltese delegation.

---

[1] *Libyan Memorial*, Annex 37(b), p. 10.

[2] *Ibid.*, Annex 37(a).

[3] This was not the delegation contemplated in the minutes of that Meeting to be sent to Malta "to negotiate the necessary agreement". They had no authority either to negotiate or to sign an agreement, though they were in a position to receive information concerning Malta's proposals.

[4] To Libya's knowledge Malta has never indicated precisely what "basepoints" it has used in the construction of its "median line".

1.11 It is appropriate here to mention the mystery surrounding "Malta's baselines[1]". No doubt, this mystery will be clarified in due course, but Libya has been unable to find out when or how the Maltese baselines were published and is not aware of the evidence on the basis of which Malta alleges (in paragraph 32 of the Maltese Memorial) that: "These lines were notified to Libya in July 1972". They were not communicated to either of the Libyan delegations on 11 July or on 12-13 July 1972. They are not even shown on the map in Annex 4 to the Maltese Memorial said to have accompanied the draft agreement presented to the Libyan delegation on 12 July 1972.

1.12 On the other hand, it is clear that, in 1972, Libya had not in any way accepted the equidistance approach of Malta, and that Libya unequivocally rejected that approach on 23 April 1973 when the Libyan delegation handed a Libyan draft agreement to the Maltese delegation. There is no need to repeat the details which are given in paragraphs 4.33 to 4.36 of the Libyan Memorial. However, it may be worth mentioning that, on 7 February 1973, during a meeting with the Maltese Prime Minister, the Libyan Minister of Transport had suggested a delimitation taking into account the lengths of the coasts. So the Maltese Government already had warning of the rejection of "Malta's Equidistance Line". This may explain, though perhaps not excuse, the action apparently taken by Malta while the talks of 23 and 24 April 1973 were actually in progress. Not only did Prime Minister Mintoff send a message to Colonel Ghadaffi dated 23 April 1973 which immediately rejected the Libyan proposal[2], but also on 24 April 1973 (according to paragraph 35 of the Maltese Memorial) the Government of Malta published the Notice Inviting Applications for Production Licences (L.N. 41 of 1973) in a supplement to the Government Gazette[3]. Notwithstanding the position of Libya as embodied in the draft agreement submitted to Malta on 23 April, the Notice L.N. 41 offered Blocks reaching as far south as "Malta's proposed equidistance line[4]". At that time, there was complete opposition between the proposals of the two sides and in reality the negotiating process had scarcely begun. One thing was abundantly clear, Libya had not accepted "Malta's Equidistance Line".

1.13 As indicated in both Memorials, discussions continued into 1974 but the deadlock remained. Paragraphs 70 and 71 of the Maltese Memorial, however, might be read as suggesting that Libya did not respond to Malta's request for discussions. In fact, following the Maltese Memorandum dated 1 January 1974, Prime Minister Mintoff was himself received in Tripoli on 15-16 February and there was a further visit of a Maltese delegation to Tripoli on 12-13 March 1974 for the purpose of discussing the question of the continental shelf. But, as indicated in paragraph 4.41 of the Libyan Memorial and paragraph 72 of the Maltese Memorial, by 10 April 1974 discussions had turned away from the question of delimitation to that of means for the settlement of the dispute. To avoid any risk of misunderstanding, it should be noted in this connection that the remark, attributed in paragraph 72 to Mr. Ben Amer, about a compromise (said to have been made on 10 April 1974) related not to the substance but to the means of resolving the matter.

---

[1] Further discussion of these baselines is found at para. 2.35, below.

[2] *Libyan Memorial*, para. 4.37.

[3] As noted in para. 1.06 above, it was only by the Note Verbale dated 8 August 1974 that this Notice was notified to Libya.

[4] *Maltese Memorial*, para. 65.

C. Petroleum Activities of the Parties

1.14 The history of the grant of concessions by the Parties is dealt with very briefly in the Maltese Memorial[1] and with greater detail in the context of a chronological account in the Libyan Memorial[2]. Of particular significance is the omission[3] in the Maltese Memorial of reference to Malta's 1970 offer for bidding of two "blocks" to the north and east of Malta mentioned in paragraph 4.29 of the Libyan Memorial and shown on ③ Map 7 facing page 56 therein. The area of those two blocks might have been regarded as falling within the depth and exploitability test incorporated in the Continental Shelf Act 1966 for the purpose of defining Malta's continental shelf. Their omission, for whatever reason, does emphasise that it was not until the end of May 1974 that Malta in fact purported to extend its reach southward in the direction of "Malta's Equidistance Line" by the grant of the concession to Texaco Malta Inc.[4]. Extension to that line only came in October/November 1974 with the grant of Blocks 14 and 16 to JOC and Aquitaine respectively[5].

1.15 Meanwhile, Libya was also considering its position and going through the process of preparing to grant concessions over off-shore areas. As already stated in the Libyan Memorial[6], Concession No. 137 was granted on 30 April 1968. Libya was also developing its policy of nationalisation and direct equity participation in concessions. Thus, in December 1971, all British Petroleum's concessions and interests in Libya were nationalised and, during late 1972 and early 1973, Libya was negotiating with foreign oil companies, including Texaco Oil Overseas Co., concerning direct Libyan equity participation in concessions. As stated in footnote 6 on page 61 of the Libyan Memorial, Law No. 66 of 1973[1] effected the nationalisation and transfer to the State of 51% of all properties in Libya owned by Esso Standard of Libya Inc., Texaco Oil Overseas Co. and California Asiatic Oil Co. Texaco's oil activities in Libya came to a halt, and Texaco failed to reach agreement with the Libyan authorities on a formula for participation. Consequently, on 11 February 1974, the remaining 49% of Texaco's concession interests were nationalised. On 31 May 1974, Texaco was granted by Malta concessions over Medina Bank Blocks 2, 3, 4 and 9. While these facts have no direct relevance to the question of delimitation in the present case, they may shed some light on the theme of pressure by the oil companies for the conclusion by Malta of a "median line" agreement with Libya which appears in the Maltese Memorial. For example, there is the statement of 23 April 1973, mentioned in paragraph 66 of that Memorial, in connection with the solicitation of tenders for the offshore areas that "it is now impossible for us to evade the commitments we have made with international oil companies". This is followed by the assertion in paragraph 73, made with reference to the grant to Texaco on 31 May 1974: "Eventually, Malta found itself in a position in which it could no longer delay the conclusion with Texaco Malta Inc. of an agreement for offshore oil exploration." It is not clear whether the pressure was only exerted by Texaco or also by JOC Oil Ltd. and Aquitaine Malta S.A., *et al.*, which were mentioned in paragraph 36 of the Maltese Memorial as having been granted concessions by Malta on 31 October 1974 and 19 November 1974 respectively[2]. What is known, however, is that during 1974 JOC Oil Ltd. was in negotiation with the Libyan authorities about concessions in the Medina Bank area, but that they refused to contract with that company for technical reasons.

---

[1] Paras. 35-38.

[2] Paras. 4.07, 4.28, 4.29, 4.38 and 4.43-4.57.

[3] The significance of this omission is underlined by the mention in paras. 37 and 38 of events said to have occurred in 1981, long after the signature of the Special Agreement in 1976, *e.g.*, the grant of additional concessions by Malta "closer inshore, just to the west and south of Malta and Gozo". Moreover, the reference to the "surrender" of Concessions NC 35A and NC 35B by Exxon may create a false impression. These two Concessions were not extinguished. Having been relinquished by Exxon (in 1980) they were formally assigned to the National Oil Corporation of Libya in 1981. The Concession NC 35A was later vested in Sirte Oil, a company set up by the National Oil Corporation.

[4] *Maltese Memorial*, para. 36. This was over a year after Libya's rejection of equidistance was made known to Malta by the Libyan counter-proposal.

[5] See the *Table* at fn. 1 to p. 16, below. As a matter of fact, contrary to the suggestion made in para. 203 of the *Maltese Memorial*, the Libyan grant of concession in September 1974 reaching north of the equidistance line actually preceded the Maltese grants in October/November 1974 which were the first to reach as far south as that line.

[6] Para. 4.28.

1.16 Another point on which clarification seems to be required is the sequence of events in the grant of concessions. Paragraphs 37, 77 and 203 of the Maltese Memorial might be taken as suggesting that Libyan action in this connection only followed after similar action taken by Malta. Any such suggestion would not correspond with the true sequence of events, whatever legal significance that sequence might be thought to have.

---

[1] The text of the Law dated 1 September 1973 is attached as *Documentary Annex 1.*

[2] Although JOC Oil Ltd. and Aquitaine Malta, *et al.*, as well as Texaco Malta Inc., are mentioned as grantees of concessions in para. 36 of the *Maltese Memorial*, only Texaco Malta Inc. is mentioned in para. 73, and no oil companies are named in paras. 70 and 71.

1.17 Even before 1974, Libya was already preparing and negotiating for the grant of concessions covering (*inter alia*) the Medina Bank area. It may be recalled that, by 1974, the Libyan method of granting "concessions" was by way of Exploration and Production Sharing Agreements (EPSAs) and this was the case as regards the concession areas NC35A, NC35B and NC53. There is no foundation for the suggestion that Libya was simply following in the footsteps of Malta or that there was any significant delay on the part of Libya in making its grants. This is seen from the chronology of events in 1974[1] which reveals that Libya entered into agreements before the Texaco concessions granted by Malta and that the two Libyan EPSAs granted in that year preceded Malta's October and November concessions. Thus, the steps taken by Libya show no delay and in themselves amount to a further firm rejection of "Malta's Equidistance Line".

1.18 As appears from Map No. 3 in the Map Annex submitted by Malta with its Memorial, the grant of a concession to Texaco over Medina Blocks 2, 3, 4 and 9 fell far short of reaching as far south as "Malta's Equidistance Line". Malta took no step to inform Libya of this grant, but it had "come to the knowledge" of Libya which immediately recorded "its reservation with the Government of Malta as regards this action" by a Note Verbale dated 30 June 1974[2]. This Note again showed the lack of acquiescense by Libya in Malta's equidistance line. It was followed by a further Note Verbale dated 14 July 1974 from the Libyan Ministry of Foreign Affairs to the Embassy of Malta in Tripoli[3].

1.19 At the time of the Note Verbale of 14 July 1974, Libya was having to rely on information from public sources, having none direct from the Government of Malta. As appears from the text, the Note Verbale was itself based on an item published in "The Times of Malta" of 1 July 1974

---

[1] Date in 1974	Parties	Nature of Grant	Area
14 April	Libya/Total	Principles of Agreement	NC 53
16 April	Libya/Esso	Principles of Agreement	NC 35A and NC 35B
31 May	Malta/Texaco	Concession	Blocks 2, 3, 4 and 9
29 September	Libya/Esso	EPSA	NC 35A and NC 35B
13 October	Libya/Total	EPSA	NC 53
31 October	Malta/JOC	Concession	Blocks 10, 11 and 14
19 November	Malta/Aquitaine Consortium	Concession	Block 16

(The date of July 1977 for the Total EPSA given on Map No. 3 in the Map Annex to the *Maltese Memorial* is not correct.)

[2] *Libyan Memorial*, Annex 47.

[3] *Ibid.*, Annex 48. Both this Note Verbale and the earlier one dated 30 June 1974 are mentioned in para. 4.49 of the *Libyan Memorial*.

containing a warning to ships and fishing boats to stay away from a ship which would be carrying out a seismographic survey during the following two months at a distance 40 miles south of Malta between the parallels of latitude 34° 26′ N on the south and 35° 06′ N on the north and the meridians of longitude 14° 50′ E on the west and 15° 32′ E on the east. While requesting from the Maltese authorities appropriate details about this information, Libya firmly stated its own position, — namely that both the Maltese agreement with Texaco of 31 May 1974 and the survey mentioned above "fall within a part of sea-bed area which is subject to negotiations between the two countries with the view to determine which appertains to each country". Here once more we have a clear challenge to the equidistance line.

1.20 No reply having been received to the Note Verbale dated 30 June 1974, Libya again requested information by a Note Verbale dated 17 July 1974 concerning the granting by the Maltese Government of the right to prospect for oil south of Malta to the Texaco Oil Company[1]. The Note also asked for a chart showing the area in which prospecting for oil was to take place. Malta acknowledged receipt of the Notes of 30 June and 17 July by a Note dated 18 July 1974[2]. It also acknowledged receipt of the Libyan Note dated 14 July 1974 by a Note dated 25 July 1974[3].

1.21 At this stage, the existence of a dispute was clearly established. If there were any doubt on this point following the statement of their opposing positions that emerged in April 1973, it was put beyond doubt in April 1974 when Malta put forward a proposal for settlement by arbitration and discussions between the Parties turned to consideration of means of settlement of the dispute. However, if any further evidence were required, it would be provided by the Maltese Note dated 8 August 1974 which confirmed the details of the area within which the seismographic survey was taking place, claimed that the area fell within the continental shelf of Malta and declined to accept the reservation made by Libya on 30 June 1974 with regard to the granting by the Government of Malta of rights to Texaco Malta Inc. for oil exploration. As indicated in paragraph 1.06 above, it was by the Note of 8 August that for the first time Malta transmitted to Libya a copy of Legal Notice 41 of 1973 said to have been issued as a supplement to the Maltese Government Gazette of 24 April 1973.

1.22 By this time, the opposition between Libya and Malta on the question of continental shelf delimitation was all too obvious. It is not surprising therefore that both Libya and Malta directed their objections to the companies which were interested in carrying on activities in concession areas affected by the dispute. There is no need to repeat the account given in paragraphs 4.51 to 4.57 of the Libyan Memorial but it may be observed that, when in 1974 and 1975 ESSO Standard Libya Inc. and Total were engaged in carrying out seismic exploration which extended into areas claimed by Malta, objections were addressed by Malta to the companies concerned. Malta's first complaint was by its letter dated 26 November 1974 addressed to Messrs. Seismograph Service (Marine) Ltd[1]. For its part, on 8 June 1975[2] (as stated in paragraph 4.52 of the Libyan Memorial), Libya addressed a letter in similar terms to each of the Maltese concession holders pointing out that the areas comprised in Maltese Blocks Nos. 2, 3, 4, 9, 10, 11, 14 and 16 "constitute a continental shelf upon which the Libyan Arab Republic maintains full sovereignty" and demanded a firm assurance from each company that exploration and drilling activities were not being carried out within the said areas. On its side, Malta wrote a letter to the Libyan concessionaire Total on 17 June 1975[3] saying that Malta was "informed that your Company is carrying out oil exploration activities in the offshore area in the Mediterranean north" of the median line. The letter requested "a categoric assurance from your Company that no such exploration or drilling activities are being or will be carried out in any part of the above area". In its reply dated 31 July 1975[4], no such assurance or undertaking was given by Total. On the contrary, Total affirmed its concessionary rights granted by Libya and merely said that the problem raised by Malta was one concerning the exercise of rights by Malta and Libya over the continental shelf. This answer gave no satisfaction to Malta, which repeated its request for assurance in a further letter of 13 August 1975[5]. Neither Total's letter of 31 July nor Malta's further letter of 13 August is annexed to or mentioned in the Maltese Memorial. On the other hand, paragraph 79 of the Maltese Memorial refers to a letter from Malta to Exxon dated 23 June 1975[6] which was in terms identical to those addressed to Total. The reply, if any, from Exxon is not annexed to the Maltese Memorial and accordingly the suggestion in paragraph 79 that the absence of activities north of the equidistance line "is confirmed by the replies received from the Libyan concessionaires" is not supported by any evidence produced by Malta and is contradicted by implication by the reply from Total of 31 July 1975.

---

[1] *Libyan Memorial*, Annex 50.

[2] *Ibid.*, Annex 51.

[3] *Ibid.*, Annex 52.

---

[1] *Libyan Memorial*, Annex 54.

[2] *Ibid.*, Annex 55.

[3] *Ibid.*, Annex 56.

[4] *Ibid.*, Annex 57.

[5] *Ibid.*, Annex 58.

[6] *Maltese Memorial*, Annex 10.

D. The "No-Drilling" Understanding

1.23 There is no need to add to the account of the negotiation of the Special Agreement[1] which began effectively with the submission by Malta to Libya of a draft proposal for reference of the dispute to arbitration in April 1974, which was met by a draft by Libya proposing reference to the International Court of Justice submitted on 3 January 1976 and the signature of the Special Agreement on 23 May 1976. However, there is one aspect of this matter which does call for comment. The Maltese Memorial makes no mention of the no-drilling understanding which was entered into by Malta and Libya at the time of signing of the Special Agreement. The existence of this understanding, which alone might be regarded as negating any contention based on the *status quo*, is clearly established by the Report of the Secretary-General of the United Nations to the Security Council on the mission of his special representative. A copy of the Report dated 13 November 1980 is in Annex 72 of the Libyan Memorial. Paragraph 6 of the Report is explicit on this point. It says:

> "Malta has confirmed that it had accepted the implicit understanding, when the Agreement was signed in 1976, that it would not begin drilling operations until the Court had reached a decision and an agreement on delimitation had been concluded in accordance with article III of the Agreement[2]."

1.24 The no-drilling understanding was also clearly reflected in the letter from Prime Minister Mintoff to Colonel Ghaddafi of 3 December 1976[3]—less than eight months after the signature of the Special Agreement and only two months after Malta's ratification of that Agreement was notified to Libya — in which the Prime Minister stated, "... I am ready to interpret your silence following receipt of this letter as implying approval that Libya, as a friendly gesture towards Malta, will let Malta drill in the area up to the median line that is exactly equidistant between our countries". Libya did not accept this suggestion by Prime Minister Mintoff but by a letter dated 15 December 1976 from Major Jalloud suggested that no "hasty unilateral decision" be taken by either side[4]. This letter has been correctly interpreted as a refusal to agree to further unilateral activity by Malta, but it was a reply to a request by Malta to be allowed to drill, not just to explore as suggested in paragraph 89 of the Maltese Memorial.

1.25 The fact is that until the time of the Texaco-Saipem incident of 10 August 1980, Malta had engaged in no drilling activities in areas of continental shelf lying between the Maltese proposed line of delimitation of July 1972 and the Libyan proposed line of 1973[1]. The four dry wells drilled in the concession areas originally granted by Malta in 1971 had all been to the north of the Libyan proposed line[2]. In 1978/1979, there were signs of change in the attitude of Malta. There were apparently shifts in the holdings of shares in the Medina Bank Blocks 10, 11 and 14 granted by Malta to JOC Oil and in the holdings in the Medina Bank Blocks 2, 3, 4 and 9, which suggested a change of interest in the area. Libya was strongly opposed to any drilling in the disputed area but became fearful that, in spite of the no-drilling understanding and the agreement made by Malta with its concessionaires to suspend oil activities, Malta was about to change its policy. There were grounds for believing that at some time in 1980 Malta had given the "green light for Medina Bank drilling[3]" and it was reported that a first test might be drilled in one of the Texaco blocks using the Saipem Due drill ship.

---

[1] See *Libyan Memorial*, para. 4.41 and paras. 4.58-4.67.

[2] The "Agreement" referred to is the Special Agreement in the present case.

[3] See *Libyan Memorial*, para. 4.70 and Annexes 61 and 62.

[4] *Ibid.*, para. 4.71 and Annex 63.

1.26 This information accords entirely with the story as told in paragraphs 95 to 100 of the Maltese Memorial[4]. It is there said that in October 1979 Malta raised the possibility of establishing a margin extending five miles wide on each side of the equidistance line within which neither country would conduct exploration activities until the boundary was finally established. This was followed on 21 November 1979 by a Maltese proposal to extend the margin on each side of the equidistance line from five to fifteen miles in width. According to paragraph 96 of the Memorial, this was a proposal "regarding the identification of the disputed area". Both proposals were in any event wholly unacceptable to Libya. However, Malta emphasised that it could not postpone any longer the exploitation of "that part of the continental shelf appertaining to Malta". According to paragraph 97, on 26-29 November 1979 Malta indicated that it could not postpone drilling any longer and, when the representatives of Malta reported that Malta had decided to go ahead with drilling operations, Libya replied that this would endanger relations between the two countries[5]. According to paragraph 100, when the Prime Minister of Malta visited Tripoli on 23 April 1980, he again notified Libya of Malta's intention to commence drilling up to fifteen miles from the equidistance line and the Prime Minister of Libya replied that Libya would protest against and resist such an action.

1.27 It was with a view to forestalling any such rash action on the part of Malta that Libya sent its formal protest of 10 May 1980[6]. In this

---

④ ⑤ [1] See respectively the lines shown on Maps 8 and 9 facing page 58 of the *Libyan Memorial*.
③ [2] See *Libyan Memorial*, para. 4.29 and Map 7 facing page 56. As noted in para. 1.14, above, the concessions granted by Malta in 1971 were not mentioned in the *Maltese Memorial*.
[3] Petroconsultants S.A., *Foreign Scouting Service, Malta*, July 1980, p. 1. A copy of this page is attached in *Documentary Annex 2*.
[4] See also *Libyan Memorial*, paras. 4.75 to 4.79.
[5] *Maltese Memorial*, paras. 97 and 99.
[6] *Libyan Memorial*, Annex 66.

connection, special attention should be given to the four specific points set out in the Libyan Note, the second of which declared Libya's "non-recognition of any activities, contracts and assignments, previous or forthcoming, which would affect its [Libya's] sovereignty". Attention is also respectfully called to the fourth point by which Libya "insistently invites the Malta Government to avoid any measures and eliminate any act which would affect the friendly relations between the two countries". In spite of this note, the drilling by the Saipem was begun within the area of the Texaco concession with the consequences that are known to the Court. The no-drilling understanding had been breached by Malta. For the first time drilling activity was commenced in areas lying between the lines proposed by the Parties in 1972 and 1973. In the light of all the history and the circumstances, it is meaningless to try to brush aside this Note as being Libya's first diplomatic protest against the Maltese concessions as is attempted in paragraph 101 of the Maltese Memorial. Equally futile is the attempt by Malta in paragraph 103 of its Memorial to classify the Maltese letters to the oil companies of 17 and 23 June 1975[1] as being of the same kind as Libya's protest to Malta of 10 May 1980. Of course, they have their significance but their classification is the same as that of Libya's letters to the Maltese concessionaires dated 8 June 1975[1]. Happily as far as Libya is aware, since the Texaco-Saipem incident in August 1980 there have been no further attempts to drill in the disputed area, and no further attempt was made by Malta artificially to limit this area to a buffer zone fifteen miles wide on each side of Malta's equidistance line.

---

[1] See para. 1.22, above.

CHAPTER 2

THE PHYSICAL FACTORS OF GEOGRAPHY, GEOMORPHOLOGY AND GEOLOGY

Introduction

2.01 In its Memorial, Libya approached the task of presenting its case to the Court in the light of the Court's clear indication that "each continental shelf case in dispute should be considered and judged on its own merits, having regard to its peculiar circumstances[1]". In its 1982 Judgment, the Court indicated that this process involved the "evaluation and balancing up of all relevant circumstances[2]". Hence, it was Libya's view that the essential task of the Parties in the present case was to expose the relevant facts and circumstances to the Court and to suggest their weight and application in order to yield an equitable result. Libya structured its Memorial toward that end.

2.02 The approach taken in the Maltese Memorial was almost diametrically opposed to this — and, in Libya's view, opposed to the jurisprudence of the Court. The case put forward by Malta in its Memorial was built around an *a priori* assumption that in the present case only an equidistance or median line can provide the right solution. In support of this contention, Malta argued that a median line constitutes the established *status quo*— a conclusion without the slightest colour of validity as has just been shown in the previous Chapter[3]. Malta has also sought to invoke State practice in support of its median line contention. Although the subjects of State practice and equidistance are dealt with in Chapters 5 and 7 below, Malta's reliance upon equidistance and its perception of State practice explain in large part its selection and treatment of the relevant circumstances of the present case.

2.03 At the root of Malta's approach lies its failure to deal with the particularity of each case of continental shelf delimitation, a point so recently emphasised by this Court in the Judgment in the *Tunisia/Libya* case in the following terms:

> "It is clear that what is reasonable and equitable in any given case must depend on its particular circumstances. There can be no doubt that it is virtually impossible to achieve an equitable solution in any delimitation without taking into account the particular relevant circumstances of the area[4]."

---

[1] *Continental Shelf (Tunisia/Libyan Arab Jamahiriya), Judgment, I.C.J. Reports 1982*, p. 92, para. 132.

[2] *Ibid.*, p. 79, para. 110.

[3] See paras. 1.02-1.07, above.

[4] *Continental Shelf (Tunisia/Libyan Arab Jamahiriya), Judgment, I.C.J. Reports 1982*, p. 60, para. 72.

2.04 Malta's staunch adherence to equidistance has required the Maltese Memorial to avoid, almost completely, dealing with the relevant circumstances of the present case. For as the Memorial of Libya demonstrated[1], the equidistance method by its very nature fails to take account of the physical factors[2] and other relevant circumstances, and even ignores geographic factors such as coastal lengths. Thus, it follows that Malta has had to ignore these factors and relevant circumstances and to obscure the obvious inequity of the result that a median line would lead to if the geographical and other physical factors relevant to the present case were considered.

2.05 In the present case, the physical factors of geography, geomorphology and geology are relevant circumstances of particular importance and hence deserve to be dealt with first. This stems from the fact that each Party must as a first step establish the basis of its claim for legal entitlement to areas of continental shelf before turning to the operation of delimitation. The physical factors that constitute the respective natural prolongations of the Parties — and hence their legal entitlement — logically come first in the discussion of relevant circumstances. These factors are inextricably related: the land territory a State projects seaward from its coasts by way of the sea-bed and subsoil throughout the natural prolongation of the land territory of the State. The sea-bed and subsoil must be considered together, as well, since they are the physical elements of which the continental shelf is composed[3]; and the subsoil (which essentially concerns geology) may in a given case be relevant in explaining the meaning and importance of sea-bed features. In a constricted setting such as that of the Pelagian Sea, the natural prolongations of the various claimant States fronting on such an area of continental shelf can be expected to overlap each other unless there are basic discontinuities in the sea-bed and subsoil which arrest the natural prolongation—and hence the legal entitlement—of a particular State or States. Such is the case in the present delimitation between Libya and Malta.

A. The Geographical Setting of the Dispute

1. Malta's Neglect of Geographical Factors

2.06 It might at first have appeared on the basis of the Libyan and Maltese Memorials that at least as to the importance of geography the Parties were of the same mind: that each considered the geographical factors to be of major importance in delimiting the continental shelf between them. The Maltese Memorial set aside an entire chapter and 24 paragraphs (Chapter V, paragraphs 110 to 134) ostensibly devoted to:

---

[1] *Libyan Memorial*, para. 7.11. See also Chapter 7, below.

[2] The term "physical factors" is used throughout this pleading to refer to geography (such as coastal lengths, coastal directions, etc.), geomorphology and geology.

[3] See the definitions of the continental shelf in Article 1 of the 1958 Convention and in Article 76, para. 1, of the 1982 Convention.

"The Importance of the Geographical Facts[1]". Malta included in its Memorial statements such as this: "...the equitable result must reflect the geographical facts in the particular case[2]." In fact, however, Malta devoted a mere two pages to the actual geographical factors, whereas Libya examined these facts in considerable detail and found them to be relevant circumstances of capital importance[3].

2.07 It is revealing, therefore, to take the various assertions regarding geography to be found scattered through the Maltese Memorial and to see what facts are put forward in their support. For while Libya agrees with the statements of Malta in paragraph 110 that: "The delimitation of the continental shelf must start from the geographical facts in each particular case[4]", and in paragraph 112 that "the validity of any method of delimitation is always related to the particular geographical situation", it is surprising to find that the "geographical facts" are discussed in a mere two pages of the Maltese Memorial (paragraphs 113 to 120). And very little even of these two pages deals with geographical facts at all.

2.08 Thus in paragraph 113 it is said that:

—Malta is an island State;

—the entire group of islands has a total length of about 28 miles;

—the "principal island in its southern aspects is in every sense opposite the coast of Libya";

—the "island of Malta and the Libyan coastline have a certain tilt, at an attitude northwest to southeast";

—the distance between Malta and any point on the Libyan coastline is not less than 180 nautical miles and in some sectors greater;

—there are no intervening islands; and

—"the seabed is a continuum in geological terms".

This is virtually all in the way of "geographical facts" that are put forward by Malta to describe the "geographical framework of the delimitation to be effected[5]".

---

[1] Libya devoted 50 paragraphs in Chapter 2 of its *Memorial* and 24 paragraphs in section B of Chapter 9 to the same subject.

[2] *Maltese Memorial*, p. 107.

[3] As will be seen in Section D below, Malta's treatment of the sea-bed and subsoil was even more cursory.

[4] Citing the *Anglo-French Arbitration, Decision of 30 June 1977* (Cmnd. 7438), p. 54, para. 84.

[5] *Maltese Memorial*, para. 114.

2.09 From these bare-bone facts certain conclusions are then said to flow, conclusions that reappear on and off throughout the Maltese Memorial presumably intended to gain veracity and weight through the very act of repetition. Among these conclusions are these found in paragraph 114:

—there are no incidental or unusual geographical features (for example, no peninsulas complicate the picture);

—there are "simply certain large-scale geographical data: the island State of Malta standing at a considerable distance from the coastline of Libya"; and

—two coastal States thus face one another in a "very simple setting, in the absence of narrow seas or other special circumstances".

2.10 The matter of size appears briefly in paragraph 29 where the evident admission is made that Malta is small in size and very small in population — an abstract statement not related in any way to the much larger size of Libya in both respects. This difference in size — and in particular in the lengths of relevant coastlines — is regarded by Libya to be a key relevant circumstance in the present case[1].

2.11 Another geographical aspect of Malta's Memorial that perhaps as much as anything else illustrates the short shrift given to the geographical facts (as well as to the geomorphology of the sea-bed) relates to the maps used by Malta in Volume III of its Memorial. They are based on British Admiralty charts, as is *Map 1* following this page, a reduction of an up-to-date British Admiralty chart. But three of these Maltese maps are based on charts long out of date. For example, Map No. 1 of Volume III of the Maltese Memorial reflects data only up to 1969. There have been 26 updatings since that time which are reflected in *Map 1*. Map No. 1 of the Maltese Memorial is of special interest since in the areas of shelf north of Malta — coloured in blue to represent depths shallower than 100 metres — a channel-like gap appears. This gap simply does not appear on up-to-date bathymetric charts[2]. No such break in the 100-metre isobath is ⑪ shown on *Map 1* or on the IBCM, the most current bathymetric chart of the Mediterranean[3].

---

[1] See, for example, *Libyan Memorial*, para. 9.21. See also. Chapter 2, Section B.4, below.

[2] Moreover, scientists believe that dry land connected Malta to Sicily during prehistoric and protohistoric times. See *Libyan Memorial*, paras. 3.38 ff., and paras. 2.78 to 2.80, below.

[3] The reference to the "IBCM" is to Sheet 8 of the International Bathymetric Chart of the ⑪ Mediterranean. A reduced copy of this Chart was placed in the pocket section of Vol. III of the *Libyan Memorial*. See para. 3.03 and Part I of the Technical Annex to the *Libyan Memorial* for details regarding this Chart. The Italian bathymetric map issued by the Instituto Idrografico della Marina-Genova, December 1972 (reprint of February 1980): Mare Mediterraneo, Canale di Sicilia, No. 1503 also shows no such break in the 100-metre isobath.

2.12 A few more general statements which give the impression that Malta is emphasising the importance of geography can be found in the Maltese Memorial. For example, in paragraph 144, paragraph 73 of the ***Tunisia/Libya*** case is cited for the proposition that "... the coast of the territory of the State is the decisive factor for title to submarine areas adjacent to it[1]". But the paucity of geographical facts to be found in the Maltese Memorial scarcely supports these general statements. The conclusions that appear and reappear throughout Malta's pleading suggest, rather, that in the view of Malta the geographical facts in the present case have no particular relevance to the method of delimitation to be adopted. Instead, it is said by Malta that the geographical setting is "simple" (*e.g.*, paragraphs 114, 131); that the delimitation is to occur in an "entirely normal setting" (*e.g.*, paragraph 131); that it is merely a matter of two coastal States facing each other "at a considerable distance" (*e.g.*, paragraph 248); and that the key factors are location, distance, simplicity and coastal relationships (*e.g.*, paragraph 264). To quote in part from paragraph 263:

> "There is in legal terms a complete absence of abnormal geographical features in the present case. . . . Nor is there anything unusual about the Libyan coastline, which is obviously free from abnormalities. Moreover, the ***relationship*** of the Maltese and Libyan coastlines is quite unremarkable".

These assertions will be taken up in turn below[2].

2. The Twin Themes: "Simple" and "Normal"

2.13 The twin themes that the geographical setting of the present case is "simple" and "normal" run all through the Memorial of Malta. Simplicity is equated to the alleged absence of unusual features: "Two coastal

---

[1] *Continental Shelf (Tunisia/Libyan Arab Jamahiriya), Judgment, I.C.J. Reports 1982*, p. 61, para. 73. See also *Maltese Memorial*, para. 127 and the subparagraph title immediately preceding para. 213.

[2] Malta's pleading contains other statements which, aside from their obscurity, have no legal support and, not surprisingly, none is cited. For example, in paragraph 265 appears the statement that "in the context of delimitation the political geography is a part of the 'geographical configurations' which count for legal purposes". See also *Maltese Memorial*, para. 266:

> "It must follow that the existence of a homeland, even consisting exclusively of a single island or a compact island group, draws in its train certain legal consequences. After all, 'the land dominates the sea' in the legal philosophy of the continental shelf. The coasts of the island State, like most of any other State, support basepoints which control an appropriate area of shelf. These effects are the consequence of what is in legal terms perfectly *normal* geography and of the primary political and geographical elements there present. Malta, as an island State set at a considerable distance from the North African coast, has its appurtenant shelf and Libya has the shelf areas corresponding to its own coastline. The political geography is clear. No claim is made to deprive Libya of her appurtenant rights: and the fact that Malta is an island cannot justify the undoing of the frontier of equidistance."

See also *Maltese Memorial*, para. 147, for an equally unfathomable statement.

States thus face one another in a very simple setting, in the absence of narrow seas or other special circumstances[1]." The "myth of normality" reposes on the absence of intervening islands or promontories[2]. But normality does not exist in geographical settings: each case has its own unique characteristics. Certainly, the setting of the present case is far from what might be called "normal" as an examination of any bathymetric chart of the Central Mediterranean reveals, particularly when compared with bathymetric charts of other areas of the world contained in the *Annex* of delimitation agreements. The mere absence of intervening islands or promontories or peninsulas does not convert the geographical setting to one of normality.

2.14 Each case is necessarily different, although some cases, in some aspects, may bear a resemblance to other cases and certain conclusions may appropriately be drawn from such facts. The word "normal" has no place in any geographical-geomorphological setting[3]. In each case of delimitation it devolves on the Parties to inform the Court accurately of the particular physical factors that characterise the case and not to gloss over them or to ignore them. To characterise the setting of the present case as either "simple" or "normal", the sea-bed and subsoil would have to be overlooked; the coasts of the Parties — their lengths, directions and relationships — ignored; the difficulties of comparing a very small island group with a very large continental landmass with an extensive coast circumvented; and the presence of neighbouring third States assumed not to exist. Such a characterisation is achieved by Malta only by ignoring the facts.

3. "Location" and "Distance" as Discussed by Malta

2.15 The other related geographical elements emphasised in the Maltese Memorial are "distance" and "location"[4]. Malta makes much of the point that the Maltese Islands lie at a distance of not less than 180 nautical miles from the nearest Libyan landfall and often at greater distances. The figures given in the Libyan Memorial, paragraph 2.25, were that the Maltese Islands lie some 44 nautical miles south of Sicily and 158 nautical miles northeast of Tunisia; that the nearest landfall on the Greek mainland is 340 nautical miles distant; and it might be added — particularly given the "tilt" of the Maltese Islands and the direction in which Malta's asserted baseline between Filfla and Ras il-Wardija on the southwest tip of

---

[1] *Maltese Memorial*, para. 114.

[2] See paras. 7.15-7.16 below where a legal discussion of the "myth of normality" is found.

[3] In this respect it has been noted that, "... la nature [est] souvent rebelle aux simplifications des juristes." Cited by DUPUY, R.J., *L'Océan Partagé*, Paris, Pedone, 1979, pp. 109-110. A copy of these pages is attached as *Documentary Annex 3*.

[4] The distorting effect of "distance" — given the fact of very different coastal lengths — when the equidistance method is used, is discussed at paras. 7.24-7.27, below. As to "location", see subsection 4 below in which the presence of third States is discussed.

56

Gozo faces — that the distances between Malta and the Italian Pelagian Islands are the following: 64 nautical miles to Linosa, 95 nautical miles to Lampione, 82 nautical miles to Lampedusa, and 111 nautical miles to Pantelleria.

2.16 The present delimitation concerns that part of the Central Mediterranean that is bounded on the east by the Sicily-Malta Escarpment, the Medina Escarpment and the Fault Zone that runs south to approximately Ras Zarrouq on the Libyan coast, an area commonly known as the Pelagian Sea[1]. It seems evident that this Sea is in effect one of the "semi-enclosed" seas described by Malta as making up the Mediterranean Basin, enclosed as it is between Sicily, Tunisia and Libya. It forms the connecting link between the Tyrrhenian Sea and the Western Mediterranean, on the one hand, and the Ionian Sea and the Eastern Mediterranean, on the other. In contrast, the Ionian Sea to the east is a large expanse of open sea across which Italy, and then Greece further east, face the Libyan coast. Malta's location in the Pelagian Sea is unique. The coasts of the Maltese Islands are clearly associated with the southwest-facing coast of Sicily, with the Italian Islands of the Pelagian Sea and with parts of the Tunisian and Libyan coasts, but only as far east as Ras Zarrouq.

2.17 The present delimitation is to occur, therefore, in a confined area. Between Cape Bon and the nearest point on Sicily across the Strait of Sicily proper is a mere 78 nautical miles. From the center of the southwest-facing coast of Sicily to Ras Kaboudia in Tunisia is 170 nautical miles and to Ras Ajdir is 264 nautical miles. From the southeast tip of Sicily to Ras Zarrouq is 255 nautical miles. In this area between Sicily, Tunisia and Libya, a number of islands are located: the Maltese Islands, four Italian Pelagian Islands, the Kerkennah Islands and the Island of Djerba. The narrowness of this area is brought out by the fact that the part of the Pelagian Sea where Malta is located is often referred to as the Strait of Sicily or the Sicily Channel[2]. In such a confined area, the claim of each coastal State must necessarily take into account those of its neighbours—which leads to the next part of this Chapter.

4. The Location of the Parties—the Presence of Third States

2.18 It is quite remarkable to read the concluding statements in the Maltese Memorial bearing on geographical factors, and in particular on the location of Malta and Libya, without finding any mention being made of third States and the potential delimitations between them and both

---

[1] See *Map 3* facing p. 44.

[2] The subject of distance is also dealt with below in Chapter 4, paras. 4.46-4.52 in the context of the so-called "distance principle" invoked by Malta.

Libya and Malta. For example, paragraph 234, purporting to be a resumé of equitable circumstances and "relevant circumstances of particular relevance", mentions the following:

> "(b) The general configuration of the coasts of the Parties involves a coastal relationship of opposite coasts set at a considerable distance from each other, and the absence of any special or unusual features.
>
> (c)... the presence of opposite coasts and the absence of displaced islands or other unusual features."

And in the concluding paragraph 272, appear the following statements:

> "(c) The geography of the Malta-Libya relationship is simple and there is no legal basis for 'abatement' of the normal effect of coastal features.
>
> (d) The dominant geographical circumstances consist of the position of Malta at a considerable distance from the Libyan coast, and the absence of any intervening islands."

2.19 Do Italy and Greece simply not exist? Why are the Italian Pelagian Islands ignored in the Maltese Memorial (particularly in view of the "tilt" of the Maltese Islands and the direction of Malta's baseline between Filfla and Gozo)[1]? What stands out in reading these paragraphs of the Maltese Memorial is the conspicuous absence of any mention of the real location of Malta — surrounded by continental States and by other islands with which potential delimitations may lie ahead[2]. The *Annex* devoted to delimitation agreements will bring out forcefully how States in settings where other delimitations are involved have taken this factor into account.

2.20 Malta does make one reference to a neighbouring State — in paragraph 119 of its Memorial where, in a flight of fantasy, it conjures up a hypothetical situation of Malta vanishing from the Pelagian Sea in an attempt to show the equitable result to which an equidistance line would allegedly lead[3]. However recent Malta's existence may be in geological terms, it is not part of Libya's case to suggest that Malta, like the Island of Julia[4], might suddenly disappear. Malta is present in the Mediterranean for purposes of this case just as much as Libya, Sicily, the Italian Pelagian Islands, the Italian mainland, mainland Greece and Crete.

---

[1] See para. 2.33, below.

[2] The *Libyan Memorial* brought this aspect out in considerable detail. See, for example, paras. 6.74-6.76 and 9.44-9.60.

[3] Malta's other hypothetical case — this time with Malta sitting out in the Atlantic Ocean facing Portugal — is dealt with in Chapter 4, para. 4.46, below. The use of these hypothetical examples is yet another illustration of Malta's failure to recognise the uniqueness of each particular situation in delimiting the continental shelf.

[4] See para. 2.07 of the *Libyan Memorial*.

2.21 There can scarcely be any doubt that the jurisprudence has consistently recognised the relevance of the factor of third State delimitations[1]. Given that in the present case the delimitation is to be made in a confined sea, with other States bordering the area, it is really quite remarkable that Malta ignores their presence, and seemingly sees itself — hypothetically again — standing across from Libya, in total isolation as if in some vast ocean. In the same vein, the Maltese Memorial does not hesitate to advance a "principle of non-encroachment", alleging that a Libyan claim north of an equidistance line would constitute a "massive breach" of this principle. Yet Malta seemingly fails to see how "massive" would be the encroachment of Malta's own claim which, by ignoring the presence of third States, would seek to acquire continental shelf rights in areas which fall for delimitation between other neighbouring States.

2.22 There are two possible (and not incompatible) explanations for Malta's extraordinary silence on the matter. The first is that, at least in the *dispositif* of the 1969 Judgment, the relevance of actual or prospective delimitations with third States was stressed in the context of proportionality. Hence, if Malta seeks to avoid any reference to proportionality, there is a certain logic in omitting all reference to delimitations with third States. However, even this explanation is incomplete, for in the Court's 1982 Judgment and also the Decision of the Court of Arbitration in 1977 the concern over this factor was by no means limited to the effect these delimitations might have on the proportions of shelf area attaching to each party. It is evident that the Courts have a far wider concern — namely, that their judgments should take account of existing delimitations and not prejudice future ones.

2.23 The second, and more likely, explanation for this curious omission is that the Maltese equidistance claim is simply incompatible with both existing and prospective delimitations with third States, or even between third States.

2.24 There are, of course, two existing delimitations to be taken into account: Tunisia/Italy 1971, and Italy/Greece 1977; not to mention the Court's 1982 Judgment as between Tunisia and Libya[2]. As to these, the Maltese equidistance claim would seem to involve a rejection of part of the Tunisia/Italy 1971 boundary. It might, of course, be said that this is of no concern to Libya, or to the Court in the present case. The matter is not so simple as that, for the whole of Malta's case against Libya depends upon the thesis that Malta is generally entitled to equidistance. Yet, vis-à-vis the Italian Islands of Linosa, Lampione and Lampedusa, Malta appears to be abandoning equidistance and seeking to enclave those islands instead.

---

[1] See the references at para. 6.74 of the *Libyan Memorial*. See, also, the *Anglo-French Arbitration, Decision of 30 June 1977* (Cmnd. 7438), paras. 24-28, which referred to the potential U.K./Ireland boundary.

[2] See *Libyan Memorial*, paras. 6.74-6.76 and paras. 9.44-9.60.

Thus, the Tunisia/Italy 1971 delimitation is relevant in this case in that it raises an inconsistency in Malta's position and therefore brings into question the whole validity of the Maltese thesis as against Libya.

2.25 As to the delimitation between Tunisia and Libya, in application of the 1982 Judgment of the Court, it does not appear appropriate to comment on this situation except to note its relevance to the present case.

2.26 More serious still, in Libya's view, are the consequences of the Maltese claim in relation to the Italy/Greece 1977 delimitation. There are two separate aspects to this. The first is that, as Map 14 of the Libyan Memorial demonstrates, the Maltese claim virtually preempts, and precludes, any future Libya/Italy delimitation. There is, at the moment, a relatively small "gap" between the extreme eastern point of the Maltese claim (Point 12) and the southerly point of the Italy/Greece delimitation: but this southerly point is provisional, so there is no certainty that even this small gap will remain. But even assuming it does, the area left for any future Italian/Libyan delimitation is incredibly small: latitudinally it is only some 17 nautical miles. Yet to the east of Malta there is Italian coast between the meridians of approximately 15° E and 18°45′ E, with a latitudinal length of some 190 nautical miles directly across from the Libyan coast. The Maltese claim to this vast area to the east, based upon an east-facing coastal front of only 5.4 kilometres, virtually excludes any relationship between these two long Italian and Libyan coasts.

2.27 Nor does the anomaly end there, for the implication of the Italy/Greece 1977 delimitation line is that to the east of that line the Greek shelf will abut on a Libyan shelf. If the line is projected south it meets the Libyan coast between approximately the 18°45′ E and the 19° E meridians. This will leave all the Libyan coast to the east as a coast ⑫ opposite and relevant to Greece. Yet, as Figure A of the Maltese Memorial shows[1], Malta assumes that this entire coast as far east as approximately 23° East longitude is opposite to Malta. The Maltese claim may be said to prejudice not only the future Italy/Libya delimitation, but also a future Greece/Libya delimitation.

2.28 This result is plainly inequitable, and wholly unacceptable. It is the essence of encroachment. It is small wonder that the Maltese Memorial has not ventured to discuss the factor of delimitations with third States, for this factor alone exposes the excessive and inequitable nature of the Maltese claim.

---

[1] See *Maltese Memorial*, p. 118.

B. The Coasts of the Parties—the Factors of Length and Relationship

1. The Importance of Coasts as Reflected in the Jurisprudence

2.29 The Court has made clear the major importance of the respective coasts of the States in any delimitation of the continental shelf. For the coasts of the Parties lay the basis for entitlement to areas of shelf. As expressed by the Court in paragraph 73 of its 1982 Judgment—

> "... the coast of the territory of the State is the decisive factor for title to submarine areas adjacent to it".

In the next paragraph of the same Judgment, the Court further elaborated on the point, as follows:

> "The coast of each of the Parties, therefore, constitutes the starting line from which one has to set out in order to ascertain how far the submarine areas appertaining to each of them extend in a seaward direction, as well as in relation to neighbouring States situated either in an adjacent or opposite position[1]."

In the same vein, the Court has emphasised the need to consider the length of the coasts of the Parties. As the Court said in paragraph 91 of its 1969 Judgment—

> "... equity does not require that a State without access to the sea should be allotted an area of continental shelf, any more than there could be a question of rendering the situation of a State with an extensive coastline similar to that of a State with a restricted coastline[2]".

In paragraph 131 of its 1982 Judgment, the Court took clear note of the respective lengths of the coasts of the two parties to that case, and the parties themselves took pains to bring to the Court's attention the detailed facts regarding their respective coasts which they felt relevant.

2. Malta's Neglect of Coastal Details

2.30 However, the Maltese Memorial pays only lip service to the importance of the coasts of the Parties. For example, in paragraph 127 it is said that the "relevance of coasts must be weighed with necessary care and finesse"; but then the following sentences appear:

> "Thus the geographical configuration relevant to the determination of an equitable method of delimitation consists not merely of 'coasts', of whatever length, but to a considerable extent of the

---

[1] *Continental Shelf (Tunisia/Libyan Arab Jamahiriya), Judgment, I.C.J. Reports 1982*, p. 61, para. 74.

[2] *North Sea Continental Shelf, Judgment, I.C.J. Reports 1969*, p. 49, para. 91. See also p. 52, para. 96, and *Anglo-French Arbitration, Decision of 30 June 1977* (Cmnd. 7438), p. 60, para. 100.

> *relationships* of coasts. The *location and relation of coastlines* are the overriding factors. *It is the position of Malta at a distance from the Libyan coast, and the absence of intervening islands, which are as important as any other aspect of the geography.*"

Apparently, then, the "care and finesse" amounts to the discarding of a detailed look at the length and direction of coasts and concentrating on "relationships" of coasts, with Malta's position and claimed distance from the Libyan coast the key factors in these "relationships". Such assertions, of course, have no foundation in either jurisprudence or doctrine. But it is necessary to probe further to see exactly what Malta's position is as to coasts and coastal relationships.

2.31 To take another example, at paragraph 144, Malta cites the Court in the *Tunisia/Libya* case[1] for the proposition that "the coast of the territory of the State is the decisive factor for title to submarine areas adjacent to it". But then Malta appears to suggest (in paragraph 147) that an island State somehow has rather special rights, almost as if to divert attention from the relevant coasts of the Parties and their relationships. This paragraph is worth quoting in its entirety to illustrate how the Maltese Memorial has attempted to camouflage the geographical facts:

> "The position of the island State is one of particular sensitivity in view of the fact that it has a homeland or 'mainland' which consists of an island or group of islands, together with the appurtenance of the continental shelf in accordance with the principle that 'the land dominates the sea.' The legal interaction of land territory and sovereign rights over submarine areas is much more critical than it is for most other coastal States. Moreover, the relationship with the appurtenant shelf areas has an enhanced significance in cases like that of Malta, that is to say, when land-based resources are minimal and the shelf is the only possible location of the resources[2]."

2.32 But the Maltese Memorial has hardly anything to say about the actual coasts of the Parties other than a few statements such as that "the entire group of islands has a total length of about 28 miles" (paragraph 113). Is this distance measured along the baselines or along the coast and, if the latter, in what manner[3]? Which coasts of Malta and which coasts of Libya are believed by Malta to have a relationship with each other for

---

[1] *Continental Shelf (Tunisia/Libyan Arab Jamahiriya), Judgment, I.C.J. Reports 1982*, p. 61, para. 73.

[2] How can this statement be reconciled with the perfectly correct statement some paragraphs later in the *Maltese Memorial* (para. 161) that "[a]s a matter of legal principle the modern law of the sea assimilates islands and island-coasts to mainland territory in respect of continental shelf entitlement and rights and for all purposes of delimitation"?

[3] From calculations made by Libya, this figure appears to be in statute miles and to be the distance between the northwest tip of Gozo and the southeast tip of Malta. It does not appear to be a coastal length at all, a rather telling fact in terms of Malta's lack of interest in coastlines.

⑫ purposes of delimitation? Figure A at page 118, portraying Malta's alleged natural prolongation, seems to suggest that the entire Libyan coast between Ras Ajdir and Ras at-Tin (the easternmost point on the Libyan coast to which the Figure A triangular line extends) is relevant to an unspecified length of Maltese coast. As will be seen in Chapter 7 below, where the trapezium exercise is examined in detail, the question of the relevant Maltese coast or coasts is ignored since Figure A seems to be constructed from a point on the north coast of Gozo; and areas of shelf projecting from sections of the Maltese coastline that in no way can be said to be opposite or to face Libya are portrayed as areas of overlapping shelf between Malta and Libya. If Malta were a mere dot on a map — the size of the rock Filfla, for example — this figure would not change one iota.

2.33 What else Malta does say about its coasts and the coasts of Libya is sparse indeed. The "tilt" or orientation of Malta is suggested as being parallel to the coast of Libya. Yet even the Libyan coast between Ras Ajdir and Ras Zarrouq or between Ras Tajura and Ras Zarrouq does not really parallel the "tilt" of either Malta or of the Maltese Islands, although these coasts of the two States may be regarded as having some relationship[1]. As for the Libyan coast east of Ras Zarrouq that falls within the range of Malta's Figure A, how can this coast be described as having a northwest/southeast "tilt" that parallels that of the Maltese Islands? For east of Ras Zarrouq the Libyan coast turns south along the Gulf of Sirt for some 150 kilometres; and on the east side of the Gulf the Libyan coast arcs northward to the vicinity of Benghazi for a distance of about 280 kilometres[2].

2.34 The Maltese Memorial's assertion in paragraph 113 that the principal island "in its southern aspects is in every sense opposite the coast of Libya", though imprecise, appears to accord generally with Libya's view as to which coasts of the Parties bear a relationship with each other[3]. The only parts of the coast of the Island of Malta that can be said to face southward toward the Libyan coast are the 21 kilometres of coast between Delimara Point on the east and Ras il-Qaws on the west. In fact, Libya has suggested a more generous approach to coastline comparison by taking a coastal front measured by straight lines between the eastern and western end points on Malta and Gozo, respectively, yielding a coastal front of 45 kilometres[4]. Malta fails to say to which coast of Libya this or any other Maltese coast is opposite, but it is evident that this south-facing coast of Malta can have no relationship with any part of the Libyan coast east of Ras Zarrouq.

---

[1] The "tilt" of the Maltese Islands reinforces the point that the 5.4 kilometres of Maltese coast facing eastward can have no relationship with any Libyan coast. See paras. 2.43-2.51, below. This discussion of coasts can be followed on *Map 2* facing this page.

[2] See *Libyan Memorial*, para. 2.44.

[3] In paragraph 10.10 of its *Memorial*, Libya dealt with this point, but in a specific fashion.

[4] See *Libyan Memorial*, para. 9.16.

2.35 The matter of Malta's coasts also appears in a different context in its Memorial: in relation to the baselines said to have been adopted by Malta and notified to Libya. These baselines appear on Map No. 2, Volume III, of the Maltese Memorial[1]. It must be presumed that these baselines were drawn to show the general direction of various portions of the coasts of the Maltese Islands; and Libya is entitled to regard them as Malta's official position as to the general direction of its coasts. *Map 2* has been prepared to reproduce the Maltese baselines and to show their relation to the coasts of the various States fronting on the Pelagian Sea. It is interesting to note that only portions of the baselines between Delimara Point and Filfla, an overall distance of only 14 kilometres, would be regarded as facing southward toward the coast of Libya. As *Map 2* shows, the much greater length of the baseline between Filfla northwest to Ras il-Wardija on Gozo, a distance of 34 kilometres, does not face the Libyan coast at all. This, of course, results from the "tilt" of the Maltese Islands and from the use of the rock Filfla as a basepoint.

3. Malta's Rationale for Avoiding Coastal Details—its Basepoints Assertions

2.36 It is useful at this point to examine how Malta has sought to avoid an examination and comparison of coasts. First, Malta has asserted fallaciously that a delimitation reflecting the difference in coastal lengths between Libya and Malta "would be inconsistent with legal principle" because it would involve "a simple apportionment of the continental shelf[2]". The same paragraph then goes on to say, referring to paragraph 19 of the Judgment in the *North Sea* cases[3], that—

> "... such an apportionment of the area of shelf between the two States would be in conflict with the basic notion that the shelf constitutes the natural prolongation of the coastal State's land territory and thus appertains to that State *ipso facto* and *ab initio*".

This can only be described as sheer manipulation of legal rules, in this instance citing the often-quoted language of the Judgment in the *North Sea* cases with regard to natural prolongation to defeat the consideration of coastal lengths, a factor which the Court in the same *North Sea* cases and in the *Tunisia/Libya* case singled out as particularly relevant. How can paragraph 19 of the 1969 Judgment be used in this fashion when in paragraph 91 of the same Judgment the Court made it clear that there could be no question of "completely refashioning nature" or of "rendering the situation of a State with an extensive coastline similar to that of a State with a restricted coastline"? The distortion of legal rules becomes all the more apparent when the fact is considered that it is the natural prolongation from the respective coastlines of the Parties on which the entitlement of the Parties to areas of shelf is based.

---

[1] The discussion of Malta's baselines in this Counter-Memorial in no way constitutes an admission by Libya as to their correctness under international law or as to the acceptability of using the rock Filfla as a basepoint. The incorrectness of Malta's assertions regarding notification of these baselines to Libya and Malta's failure ever to publish a map showing these baselines have been dealt with in Chapter 1 above. See also para. 1.11, above.

[2] *Maltese Memorial*, para. 130.

[3] *North Sea Continental Shelf, Judgment, I.C.J. Reports 1969*, p. 22, para. 19.

2.37 A second way in which Malta has attempted to obscure any details regarding the coasts of the Parties is by resort to "basepoints" and to Malta's related short-abutting-coast argument. The bold and spurious assertions of Malta in this respect may be summarised as follows:

- that "Malta's coasts count as much as the coasts of other opposite States in terms of the generation of continental shelf entitlement" (paragraph 242);
- that basepoints "generate" title to continental shelf by "the natural reach of controlling basepoints" (paragraphs 120, 118);
- that "a restricted coastal sector may produce a number of very influential controlling points by reason of its location and character: and such is the case of Malta" (paragraph 128(a));
- that "apart from any unusual geographical elements, any coastal feature counts equally and must be given the appropriate controlling effect" (paragraph 122);
- that "any coast which abuts upon the shelf area to be delimited has considerable significance, even though the actual frontage involved is more or less modest in extent" (paragraph 121); and
- that "a centrally placed, regularly shaped, island or peninsula will support a smaller number of basepoints which will, nonetheless, generate an appropriately ample area of appurtenant continental shelf" (paragraph 120).

2.38 These assertions appear first in paragraphs 117 and 118 of the Maltese Memorial, where the "considerable benefits" bestowed by nature on Libya are discussed and it is suggested that "geography has also smiled upon Malta" owing to the "natural reach of controlling basepoints even on a modest coastal frontage". As a result of such basepoints, "Malta receives a certain area of shelf, the size and distribution of which reflect Malta's existence and location". Perhaps the heart of Malta's contentions as to the importance of basepoints is contained in paragraph 120, which is quoted below in full:

> "In the context of delimitation geographical facts have significance primarily in relation to base-points and construction lines. Each type of feature and circumstance has its own benefits and drawbacks. An extensive coastline generates a longitudinally extensive area of shelf rights and yet, at the same time, given the

> way in which alignments are constructed, many potential basepoints on a long, more or less regular, coastline are in a sense wasted or redundant. In the same way, a centrally placed, regularly shaped, island or peninsula will support a smaller number of basepoints which will, nonetheless, generate an appropriately ample area of appurtenant continental shelf. There is no absolute correlation between the extent of a shelf area and the number of basepoints which generate it."

This proposition is then the subject of paragraphs 121 through 126 in which certain examples of State practice and the *Anglo-French Arbitration* are cited in alleged support[1].

2.39 Constant repetition of unsupported statements such as these which run directly counter to the Court's jurisprudence does not lend them force or validity. "Basepoints" do not "generate" rights or title to continental shelf; they are data for the application of a method of delimitation — usually the equidistance method based on mere proximity to a particular point. Legal entitlement arises not from "basepoints" but from the natural prolongation of the land territory of the State and its coastal extent into and under the sea. As for the role played by short abutting coasts, they are just that: short lengths of coastline entitled to no more than any other short lengths of coast[2].

2.40 The statements found in paragraphs 265 and 266 of the Maltese Memorial are meaningless — for example, the statement found in paragraph 265 of the Maltese Memorial that "in the context of delimitations the 'political geography' is a part of the 'geographical configurations' which count for legal purposes". What is this concept that the Court is invited to recognise in lieu of the geographical facts of coasts, coastal lengths, coastal directions and coastal relationships? There is no support for such a statement. "Political geography" has nothing to do with the physical characteristics of a coast. It cannot be invoked to "refashion nature". There is no concept in the jurisprudence of what seems to have been advanced by Malta as a kind of theory of political natural prolongation.

2.41 Malta's geographical case is in effect summed up by the statement in paragraph 122 of its Memorial that "any coastal feature counts equally and must be given the appropriate controlling effect" — provided there are no "unusual geographical elements" present. This is an admission that geographical factors do not count when it comes to applying the equidistance method in a setting such as this. Of course, "special circumstances" must be found not to exist — in this case rephrased as "unusual geographical elements[1]". Once these have been disposed of, then only basepoints are of any concern, according to Malta. But this accords neither with the jurisprudence nor with the facts. In the present physical setting it is not possible to overlook the particular facts of geography — to ignore the coasts of the Parties, their lengths and relationship — in order to arrive at the conclusion that the geography is "normal" and "simple" and lacking in any "special or unusual features".

---

[1] These assertions are dealt with in Chapter 5, Sections A.2. and C, below, and in the *Annex* of delimitation agreements, where it is shown that State practice does not at all support Malta's contentions.

[2] It is revealing of Malta's attitude toward geography that Malta failed to indicate which basepoints and which short abutting coasts it considered to be of special relevance.

2.42 Exactly how the above assertions are to be squared with what is said in paragraph 220 of the Maltese Memorial, that "it is the *relationships* of coasts which really count" is truly bewildering since it would appear to be the Maltese contention that basepoints, not coasts, count. Equally perplexing in the context of a setting claimed to be "simple" and "normal" is the following statement found in paragraph 129:

> "The differences in the geographical identity of the two States are so marked that the requirement of equity that 'like should be compared with like' — 'the only absolute requirement of equity' — is not applicable."

By this statement Malta attempts to cast off the findings of the Court in the *Tunisia/Libya* case[2]. But the statement also suggests that the problems involved in comparing a very small island State with a large continental State with an extensive coastline are not exactly "simple" or "normal", quite aside from the primary objective of the statement — to discredit the application of the test of proportionality in the present case[3].

4. The Major Importance of the Coasts of the Parties in the Present Case

2.43 In contrast to the incomplete treatment of coasts in the Maltese Memorial, considerable pains were taken in the Libyan Memorial to describe for the Court the coasts of the Parties[4]. It is unnecessary to repeat here the detailed description of the coasts of the Maltese Islands set

---

[1] As noted in para. 4.06 of the *Libyan Memorial*, Malta had little difficulty in getting rid of the "special circumstances" exception to equidistance contained in the 1958 Convention — the basis for Malta's 1966 Law. It merely left this exception out of its Law.

[2] *Continental Shelf (Tunisia/Libyan Arab Jamahiriya), Judgment, I.C.J. Reports 1982*, p. 76, para. 104. This use of the Court's statement out of context is discussed at para. 6.16 below.

[3] The complexity of comparing a small island group with a large continental State with an extensive coastline was given considerable emphasis in the *Libyan Memorial* (see paras. 2.49, 9.11-9.19; and 10.08-10.11).

[4] *Libyan Memorial*, paras. 2.26-2.51, 9.13-9.21, and 10.08-10.11.

forth there — a summary will do. The length of coasts measured around the Islands of Malta and Gozo, taking into account their indentations, is roughly 190 kilometres. On the Island of Malta only the coast between Delimara Point and Ras il-Qaws — approximately 21 kilometres — can be considered to face southward toward the Libyan coast. On the Island of Gozo, only the segment of coast between Ras in-Newhela and Ras il-Wardija — no more than 7.3 kilometres long — can be regarded as facing southward toward the Libyan coast. If the Maltese baselines are referred to, however, as shown on *Map 2*, only portions of the baselines between Filfla and Delimara Point, an overall distance of under 14 kilometres, faces southward toward the Libyan coast. The much longer coastal front along the baseline from Filfla to Ras il-Wardija on Gozo does not face any Libyan coast but, rather, faces the Italian islands and the coast of Tunisia.

2.44 The Libyan coast was also described in detail in the Libyan Memorial[1]. The difference in scale between the coasts of the Parties is at once apparent, making it necessary to take longer segments of the Libyan coast in describing it. The entire coast of Libya between Ras Ajdir at the border with Tunisia and the Egyptian border stretches more than 1,700 kilometres. The section of Libyan coast between Ras Ajdir and Ras Zarrouq measures some 403 kilometres taking into account its minor indentations, and about 350 kilometres taken as one coastal front, and faces generally northward. As noted above, its direction is not the same as the direction of the portion of Malta's baseline between Filfla and Ras il-Wardija and these coastal fronts could not be regarded as abutting on the area relevant to this delimitation. However, some portion of this part of the Libyan coast might be regarded as relevant to a portion of the baseline between Filfla and Delimara Point. The rest of the Libyan coast east of Ras Zarrouq[2] needs no repeating here since it is clearly beyond the area of interest in the present delimitation and relates to future delimitations with Italy and Greece.

---

[1] *Libyan Memorial*, paras. 2.41-2.48. The pocket section of Vol. III of this Counter-Memorial contains a map of the Central Mediterranean that may be referred to in reading these paragraphs.

[2] See *Libyan Memorial*, para. 2.44.

2.45 The following Table summarises the various possible coastal length comparisons:

	Libya	Malta	Ratio
(1) Total coastal lengths	1,727 km	190 km[1]	9:1
(2) South-facing coasts of Malta and Gozo — Libyan coastal front between Ras Ajdir and Ras Zarrouq	350 km	28.3 km	12:1
(3) South-facing baselines of Malta and Gozo — Libyan coastal front as in (2) above...	350 km	14 km	25:1
(4) A line constructed between the westernmost point of Gozo and the easternmost point of Malta — Libyan coastal front as in (2) above	350 km	45 km	8:1

What this Table shows is that, granting Malta the most favourable interpretation of what part of its coast faces southward toward the coast of Libya between Ras Ajdir and Ras Zarrouq — that is by constructing a line between the westernmost point of Gozo and the easternmost point of Malta — the comparison is still of only 45 kilometres of Maltese coast with 350 kilometres of Libyan coast (also measured in a straight line) or a ratio of about 8:1.

2.46 It is also pertinent to consider the question of coasts in relation to total land area. In this respect, the territory of Malta comprises an island group having a total area of about 315 square kilometres. The Tables on pages 140 and 141 of the Libyan Memorial comparing Malta with other Mediterranean islands in respect to surface areas and coastal lengths show that in area Malta is less than half the size of Minorca and considerably smaller than Corfu, Ibiza or Djerba. It is nearly twice the size of the Kerkennah Islands. In coastal length, nature has been more generous because of the shape and arrangement of the Maltese Islands. Considering the coastal lengths of all the Maltese Islands as 190 kilometres, Malta ranks just behind Rhodes and ahead of Corfu, Minorca, Ibiza, the Kerkennah Islands, Djerba and Elba. Nevertheless, its coastal length is far less than that of Majorca. Apparently, however, Malta chooses to shun this geographical advantage and to ignore its coasts. In contrast, Libya encompasses some 1,775,500 square kilometres. Its coastal length of 1,727 kilometres extends along the Central Mediterranean from approximately the 11° 33′ E longitude to approximately the 25° E longitude behind which lies its land territory stretching far to the south[1]. Libya's north-facing coast faces Malta, Italy, mainland Greece and the island of Crete.

---

[1] This measurement, it will be recalled, is based on the lengths of the coasts around the Maltese Islands.

2.47 Malta has attempted with some ingenuity to turn the fact of its very small size in its favour — to seek some form of compensation because of its small size. For while admitting in paragraph 29 that in the context of island developing countries Malta has been identified as small in territory and very small in terms of population[2], the Maltese Memorial has asserted that its status as an island developing country is a relevant circumstance entitling it, in effect, to preferential consideration in delimiting the continental shelf in the present case[3]. However, it seems evident that size is a geographical factor that is of relevance in the present case. Surely, a small group of smaller islands cannot be considered to generate a totally disproportionate amount of continental shelf in a delimitation between it and a continental State comprising a very long coast and an extensive continental landmass in a constricted setting.

2.48 Furthermore, the extent of the land territory behind the coast must be regarded as linked to the factor of the natural prolongation of the land territory of a State from its coast seaward by way of its continental shelf. The land territory behind Libya's extensive coast is immense, whereas both the coast and land territory of Malta are very small. Surely, the intensity of the natural prolongation must be greater — the prolongation, more natural — from the Libyan coast in arriving at a line of delimitation[4]?

2.49 Turning to the matter of coastal relationships, it is evident that this factor has a direct bearing on verifying the equity of the result through

---

[1] Land area/coast ratios (in km^2 per km of coast) are: Libya-1,028.08 km^2; Malta-1.66 km^2.

[2] As to population, the following are the relevant statistics contained in the *Libyan Memorial:* Libya (1977)—2,939,200, Malta(1981)—320,000. The 1983 population of Libya is estimated at 3,400,000, an increase in six years that exceeds the total present population of Malta. Projections as to population are these:

	1981	2000	Increment
Libya	3,100,000	5,700,000	2,600,000
Malta	320,000	400,000	80,000

[3] This subject in covered in Section A.4. of Chapter 3 below.

[4] Malta's neglect of the factor of size is seen in its trapezium construct, where the total area covered by the trapezium measures, according to Libya's calculation, 288,074 square kilometres. Malta would allocate 47,848 square kilometres to itself and 240,230 square kilometres to Libya. In terms of coastal lengths, this would mean that each kilometre of Maltese coast (based on a Maltese coastal length of 190 kilometres—the total coastal lengths around each of the islands) would receive 251.8 square kilometres of continental shelf. In contrast, a kilometre of Libyan coast would receive only 170.2 square kilometres of continental shelf (based on a Libyan coastal length of 1,411 kilometres between Ras Ajdir and Ras at-Tin to accord with the trapezium construct). In terms of landmass, this allocation would result in each square kilometre of Maltese landmass (out of a total area of 315 square kilometres) having allocated to it 151.9 square kilometres of continental shelf and each square kilometre of Libyan landmass (out of a total of 1,775,500 square kilometres) having allocated to it .135 square kilometre.

the test of proportionality based on the length of relevant coasts. Malta seems to have rejected out of hand this principle, well-established in the jurisprudence of the Court. But this is not the sole relevance of coastal relationships — for they also bear on the areas of shelf to which the Parties may claim entitlement and hence which are relevant to the present case. For the continental shelf is the natural prolongation of the land territory of each Party, and this natural prolongation starts from the coasts of the Parties and not from baselines or basepoints. Hence, the relationships of the coasts of the Parties necessarily define the areas of continental shelf which are pertinent to a delimitation between them.

2.50 Thus, a major factor in relating the coasts of Libya and Malta to each other is size. Malta is a group of small islands with very short coastlines; Libya is a large continental landmass with an extensive coastline which fronts on virtually the entire length of the Central Mediterranean (comprising the Pelagian and Ionian Seas) and even on portions of the Eastern Mediterranean. How then are the many little lengths of coast of the Maltese Islands, facing in all sorts of directions — but only to a very limited degree to the south toward Libya — to be related to the long Libyan coastline? For though the entire stretch of Libyan coast may be seen to face generally north, in various sections — such as on the western and eastern sides of the Gulf of Sirt — it faces in quite different directions for distances that far exceed the various segments of Maltese coast. The "tilt" of the Maltese Islands accentuated by the baselines adopted by Malta, together with the tiny length of coast of the Island of Malta facing east, make clear that the only Libyan coast to have any possible relationship with Malta extends no further to the east than Ras Zarrouq.

2.51 So it must be concluded that the coasts of the Parties and their relationships to each other were virtually ignored by Malta. Instead, Malta attempted to turn its small size in its favour. The various devices used to camouflage the geographical factors relevant to the present case have been quite fully discussed above. Other devices of a different character will be taken up in Chapter 3 dealing with the irrelevant factors advanced by Malta. It is appropriate to turn now to see how the sea-bed and subsoil of the continental shelf lying between Libya and Malta fared in the Maltese Memorial — the subject of the next section.

C. The Sea-Bed and Subsoil of the Continental Shelf Areas

Introduction

2.52 The relevance to a delimitation of the continental shelf of such factors as the physical characteristics of the sea-bed and subsoil of the continental shelf lying between the Parties, as discussed by this Court and by the Court of Arbitration in 1977, was taken up in paragraphs 6.45 through 6.54 of the Libyan Memorial. The facts relating to the sea-bed and subsoil, which Libya considers to be particularly relevant to the present delimitation, were fully dealt with in Chapters 3 and 8 of the Libyan Memorial. Yet even if Malta's wholly inadequate treatment of the physical character of the sea-bed and subsoil of the continental shelf does not call for the introduction of new elements in Libya's Counter-Memorial, it is in itself worthy of attention in a juridical analysis of the Memorial of Malta. In addition, a number of Malta's assertions require response.

2.53 The setting is described in the Maltese Memorial as lacking in "special or unusual features[1]", though modern bathymetric charts show otherwise. It may be for this reason that Malta's maps do not reveal the features of the sea-bed. Malta even claims that the natural prolongations of Malta and Libya overlap as far east as Ras at-Tin on the eastern coast of Libya, but Malta produces no support for this assertion. Quite to the contrary, such a claim is based on an artificial construct that takes no account of either the geographical setting or the sea-bed morphology.

2.54 Before turning to the various assertions of Malta aimed generally at attempting to depict the area of shelf between the Parties as continuous and featureless, an examination of the jurisprudence is appropriate. In its Judgment in the *Tunisia/Libya* case, while not finding geomorphological or geological factors useful either in determining the limits of the entitlement to areas of shelf or as relevant circumstances in the delimitation of the shelf between the parties in that case, the Court gave full consideration to the contentions of the parties regarding the features alleged to exist on the sea-bed as well as to the geological data said to relate to the determination of the natural prolongation from the coasts of the parties. In paragraph 61 of its 1982 Judgment, the Court stated that it was of the view—

> "... that what must be taken into account in the delimitation of shelf areas are the physical circumstances as they are today; that just as it is the geographical configuration of the present-day coasts, so also it is the present-day sea-bed, which must be considered. It is the outcome, not the evolution in the long-distance past, which is of importance[2]".

Thus, the Court made clear that the present-day sea-bed just as the configuration of the present-day coasts is one of the factors to be examined in any case of continental shelf delimitation.

1. Malta's Treatment of Geomorphology and Geology

2.55 The sketchy treatment of geography in the Maltese Memorial was matched by an even more sketchy discussion of geomorphology and geology, limited to a few paragraphs and some phrases that are repeated on and off throughout the pleading. The key paragraphs in this respect are paragraphs 56 and 57[1]. The following propositions are stated in paragraph 56:

---

[1] See *Maltese Memorial*, para. 234(b).

[2] *Continental Shelf (Tunisia/Libyan Arab Jamahiriya), Judgment, I.C.J. Reports 1982*, p. 54, para. 61.

- —the seafloor between the Parties exhibits a "generally east-west or northwest-southeast trending relief";
- —"Broadly to the south of Malta are a series of deep troughs reaching over 1000 m. in depth known geologically as the Pantelleria and Linosa graben (also known as 'Fosse de Malte', 'Fosse de Linosa' and 'Chenal de Medina')";
- —"Mid-way between Malta and Libya is a broad shallow region, mostly less than 400 m. deep called the Plateaux of Melita and Medina. Geologically this is an elevated region bounded to the north and south by fault systems"; and
- —a reference to the Tripolitanian Furrow, quoting from the Judgment in the *Tunisia/Libya* case that this feature does not "display any really marked relief until it has run considerably further to the east than the area relevant to the delimitation".

Paragraph 57 is set forth below in its entirety:

> "The entire region south of Malta as far as the Libyan coast relevant to this case forms a continuous continental shelf. In the geological terminology of continental margins, no continental slopes descending to abyssal depths are found in this area."

2.56 The last of these assertions will be considered first. It is similar to the statement appearing in paragraphs 132 and 248 of the Maltese Memorial that "the seabed is a continuum in geological terms". These phrases sum up one of the themes of the Memorial of Malta—it reappears throughout Malta's pleading taking other forms such as: "continuous continental shelf" or "same continental shelf" or "simple continental shelf" (*e.g.*, paragraphs 57, 211, 234(a) and 272(b)).

2.57 These statements need to be examined in the light of the facts. The bathymetric charts clearly show the lack of similarity between the sea-beds of the Pelagian Sea and the Ionian Sea, divided as they are by the very evident discontinuity created by the line of escarpments and fault zone. This can be plainly seen on the bathymetric chart appearing as *Map* 3[2]. Surely these two sea-bed areas cannot be considered to be continuous or to form a "continuum". As to the seafloor of the Pelagian Sea, how can it be described as a "continuous continental shelf" or the "same" or a "simple" continental shelf?

---

[1] See para. 55, which describes the Maltese Islands as "emergent parts of the Maltese plateau (sometimes called the Ibleo-Malta Plateau)", and deals with Malta's geographical, geomorphological and geological ties to Sicily. This point will be discussed in para. 2.80, below.

[2] The Sea-Bed Model furnished to the Court with the *Libyan Memorial* also reveals the differences between these sea-bed areas. Photographs of this Model can be found at the very back of Vol. I of the *Libyan Memorial* and facing p. 50 as well as in the pocket section of Vol. III of this Counter-Memorial (see fn. 3 at p. 47, below).

2.58 A sea-bed sliced up by troughs and channels[1] is in no sense continuous. A continental shelf—which consists not only of the sea-bed but also of the subsoil—with major rifting across it, so apparent from the illustrations in Parts II and III of the Technical Annex to the Libyan Memorial, can hardly be described, in either geomorphological or geological terms, as a "continuum". In fact, the word "continuum" has no status as a geological expression; it cannot be found in geological dictionaries. However, the term "continuity" is a term which may, in the appropriate case, be used in describing either the sea-bed or the subsoil of a particular area of continental shelf. But there can be no continuity of shelf when cutting across the sea-bed is a major geomorphological discontinuity in the form of deep troughs and connecting channels forming a Rift Zone approximately 300 nautical miles in length and varying in width between 15 and 50 nautical miles, running all the way from the Egadi Valley[2] between Sicily and Cape Bon to the Heron Valley far to the southeast of Malta at the junction of the Sicily-Malta Escarpment and the Medina Escarpment[3].

2.59 Nor can there be continuity of shelf geologically when the subsoil is cut through by a Rift Zone whose bathymetric expression is seen in the troughs and channels referred to above. The depth of the rifting in the area of the Medina Channel (in geological terms, the Medina *graben*) that runs roughly east/west to the north of the Medina Bank, cutting it off from Malta and from the Ragusa-Malta Plateau, is plainly seen on Figure No. 1 in Part III of the Technical Annex of the Libyan Memorial. These rifts, whose bathymetric expression is the Medina Channel, slice through the Tertiary, Cretaceous, Jurassic, Triassic and Permian layers of the subsoil (strata as old as 250 million years) down to a depth of more than five kilometres. Seismic reflection profiles confirm this fact[4].

2.60 What stands out from these facts and from an examination of the bathymetric maps is that the area of the sea-bed is quite unlike the North Sea or the English Channel or the Adriatic Sea or the Arabian-Persian Gulf, to take but four examples. If by referring to a "simple" or "the same" shelf, all that the Maltese Memorial means to say is that this whole area is part of the same African Plate which is generally acknowledged to include the southern part of Sicily, then the point should have been made in these specific terms. Libya does not question such a conclusion as to the extent of the African Plate[1]. But the African Plate is not synonymous with the continental shelf. In fact, there are several distinct continental shelves to be found on the African Plate. As was pointed out in the Libyan Memorial, the Rift Zone is of such significance that it is regarded by many geologists as creating a division in this Plate between two separate shelves. This division is actively occurring today and continues to affect the sea-bed, creating deep troughs and connecting channels that constitute a fundamental discontinuity in the seafloor[2]. To quote from Part III of the Technical Annex to the Libyan Memorial:

---

[1] It should be noted that the terms "trough" and "channel" refer to features on the sea-bed; "rift" and "fault" refer to features in the subsoil whose geomorphological expression is seen in the "troughs" and "channels" of the Rift Zone.

[2] The Egadi Valley is a feature named on the IBCM.

⑧ [3] For a graphic illustration of the Rift Zone, see the *Libyan Memorial*, Fig. 4 facing p. 132
⑨ and Map 17 facing p. 160.

[4] It is the view of scientists that the rifting in this area is so deep-seated as to cut into the upper mantle of the earth. Faults of such a depth could reach up to 20 kilometres beneath the sea-bed. See *Libyan Memorial*, Technical Annex, Part III-8.

> "It is evident that the rifting process in the Sicily Channel has already evolved to a stage as now practically to divide the Pelagian Sea into two separate blocks. One to the north [illegible]ed by the Adventure and Ragusa-Malta Plateaus; the other on the south is formed by the Lampedusa and Medina Plateaus. This second block remains substantially connected to the North African megaplate because even if it is affected by several extensional faults, these are not large, associated and coherent like those of the Sicily Channel rift system and do not constitute a continuous rift system of regional importance. The fact that the Maltese Islands emerged during the time of, and in connection with, the rifting process that separated the Ragusa-Malta Plateau from the Medina Bank shows how intrinsically connected these events are[3]."

2.61 However, Libya has sought in presenting its case to emphasise the present-day sea-bed. It is quite enough to observe the major geomorphological manifestation of the Rift Zone across the line of troughs and channels—creating a fundamental discontinuity in the sea-bed—in order to refute the idea of continuity[4]. The geological significance of this Rift Zone only serves to emphasise the fact that it constitutes a major discontinuity that extends all the way across the Pelagian Block.

2.62 Taking the various other Maltese assertions set forth above in turn, the direction of "trending relief" of the sea-bed between Libya and Malta (paragraph 56) accords entirely with the factual description of the geomorphological features of the Pelagian Block as described in the Libyan Memorial, where the word "grain" was employed. This is particularly revealed in the northwest/southeast trend of the coast of Sicily facing the Pelagian Sea, the similar direction or "tilt" assumed by the Maltese

---

[1] See *Libyan Memorial*, para. 3.11.

[2] *Ibid.*, paras. 3.12-3.20 and 8.03-8.13, and Parts II and III of its Technical Annex. It is interesting to note that the African Plate lies on both sides of the East African Rift Zone, another rift zone of first-order importance (see para. 2.76 and fn. 1 to p. 52 below).

[3] At p. III-4.

[4] The facts regarding the importance of these features are acknowledged in para. 56 of the *Maltese Memorial*.

Islands (which Malta's southwest-facing baseline between Filfla and Ras il-Wardija further emphasises) and by the direction of the Rift Zone of troughs and channels extending southwest, south and southeast of Malta described in detail in the Libyan Memorial and discussed later in this Chapter. Such a description of "trending relief" does not at all accord with the area east of the Pelagian Block bounded by the escarpments and fault zone — that is, the area of the Ionian Sea where the Ionian Abyssal Plain and the Sirt Rise are located. This area to the east is geomorphologically and geologically quite different.

2.63 The next assertion found in paragraph 56, regarding the troughs "broadly to the south of Malta", is incomplete and inexact, but it would be tedious and unnecessary to engage in a detailed analysis of the defects in this brief description. The main point is that the presence of these troughs is a complete refutation of any idea of continuity or a "continuum" across this area of shelf between the Parties. The series of troughs were noted by the Court in its Judgment in the *Tunisia/Libya* case[1]. The Libyan Memorial gives a complete description of the features which constitute the Rift Zone[2]. They are very clearly shown on the bathymetric chart appearing as *Map 4* facing the following page and on the Sea-Bed Model provided to the Court with the Libyan Memorial[3].

2.64 The main defect with this allusion to these sea-bed features in the Maltese Memorial is its casual treatment and the failure to point out to the Court the geomorphological and geological extent and significance of these features[4]. It can only be assumed that Malta has neglected to discuss the importance of these major features because their presence in the sea-bed between Libya and Malta is an embarrassment to the case Malta wishes to put forward. Otherwise, after a brief look at a relief chart or model of this area of continental shelf between Libya and Malta, how could such a setting be described as lacking in "special or unusual features"?

2.65 The next two assertions relate to the "broad shallow region" said to lie mid-way between Malta and Libya, called the "Plateaux of Melita and Medina", and described as an elevated region geologically bounded to the north and south by "fault systems" (paragraph 56) and, more specifically, to the "Tripolitanian Furrow". Again, it is regrettable that Malta has not given the Court a detailed description and has omitted certain facts of importance.

---

[1] *Continental Shelf (Tunisia/Libyan Arab Jamahiriya), Judgment, I.C.J. Reports 1982*, p. 41, para. 32.

[2] *Libyan Memorial*, paras. 3.12-3.20 and 8.03-8.13.

[3] See the photographs giving a perspective view of this Model facing page 30 of the *Libyan Memorial* and at the end of the Technical Annex in Volume I; slightly different north/south and east/west views of the Model have been included in this Counter-Memorial facing p. 50 and in the pocket section of Vol. III.

[4] The existence and importance of these features is not a matter of controversy. They appear on all bathymetric charts of the area and are dealt with extensively in the scientific literature (see the citations in the papers in the Technical Annex to the *Libyan Memorial*).

2.66 The features constituting this elevated region — using the nomenclature which appears on *Map 4* — are the Lampedusa Plateau on the west and the two Melita Banks to the south and southeast of Malta lying approximately along the line of 34° N latitude; to the north and east of these Banks is a large, almost square elevated area at the northwest side of which is an elongated, cone-shaped figure defined by the 200-metre isobath known as the Medina Bank. This Bank does not follow the "grain" of the Rift Zone, the Maltese Islands or the southwest-facing coast of Sicily but instead trends north-northeast/south-southwest, parallel to the Medina Escarpment to its east. Its direction is thus quite different from the "tilt" of the Maltese Islands. It is to the north of the Medina Bank area that the Rift Zone crosses.

2.67 In the interests of accuracy it is best to refer directly to Part I of the Technical Annex to the Libyan Memorial to describe these features[1]. There the sea-bed underlying the Pelagian Sea was described as being "divided into a Southern Unit and a Northern Unit, the dividing line between Units being the Rift Zone..." (page I-5). The Melita and Medina Banks were described as follows (page I-10):

> "The Melita Banks consists of two shoals of a depth of 86 metres and 154 metres, respectively, just east of the centre of the Southern Unit being described here. Morphologically there are, just as in the case of the Medina Bank, no abrupt features at all to be found here — only very smooth elevations of the sea bottom. Especially on their southern slopes the gradients are very gentle. In contrast, the inclinations in a northerly direction are much steeper....
>
> It is, as a matter of fact, very difficult to draw a dividing line between the northern flank of the area of depression called by the Court in its 1982 Judgment the 'Tripolitanian Furrow' and the Melita or Medina Banks."

2.68 The fault systems said by Malta to lie to the north and south of this "elevated region" are, respectively, the Rift Zone on the north and the ancient fault system on the south which today has no bathymetric expression other than the wide, flat depression north of the Libyan coast which owes its present configuration to erosional factors. These two "fault zones" have almost nothing in common. The Rift Zone is a major geomorphological and geological feature that separates the areas to its south from Malta and the Ragusa-Malta Plateau, whereas the "Tripolitanian Furrow" and the banks to its north are features that are barely noticeable on the sea-bed, have no present-day geomorphological significance and, compared to the Rift Zone, are geologically quiescent. This depression in the south has been receiving deposits of sediment since ancient times, deposits that now are of a depth of up to four kilometres. It deepens gradually toward the east (just as it deepens going northward from the northwestern coast of Libya). This deepening of the seafloor becomes more marked after passing the eastern edge of the Pelagian Block into the Sirt Rise area of the Ionian Sea.

---

[1] Very full descriptions of all these features are to be found in paras. 3.25-3.37 of the *Libyan Memorial* and in Part I of its Technical Annex; the basic geomorphological and geological distinction between the depressed sedimentary basin north of the Libyan coast, often referred to as the Tripolitanian Furrow, and the Rift Zone are also spelled out in paras. 8.10-8.13 of the *Libyan Memorial*. Fig. 3 of the *Libyan Memorial* facing p. 38—a contour map—depicts those features clearly.

2.69 A final point in this section of the Maltese Memorial needs to be dealt with before moving on to a description of the features of the sea-bed and subsoil of particular concern in the present case. This is the implication in paragraph 57 that the relevant area is a continuous continental shelf due to the absence of continental slopes descending to abyssal plains. The concept of continental margins, equated solely with the morphological sequence of shelf-slope-rise-abyssal plain, cannot be applied to the area of the Pelagian Sea. But this quite technical defect in paragraph 57 of the Maltese Memorial is minor compared to its failure to recognise the real point. The area of continental shelf relevant to the present case lacks continuity for a quite different reason. This is the presence of troughs and channels in the sea-bed between Malta and Libya, the deepest of which exceeds 1,700 metres with slopes where steepness is at times 1:5 as opposed to the average for a continental slope of 1:14; as well as the presence in the subsoil of *grabens* that cut deeply into the strata.

2. The Importance of the Physical Factors of Geomorphology and Geology in the Present Case

2.70 Libya does not intend at this stage in the pleadings to introduce any new scientific material in further support of the fact that a fundamental discontinuity cuts across the area of continental shelf between the Parties in the form of the Rift Zone and that this area of shelf is bounded on the east by major geomorphological and structural features: the line of Escarpments and Fault Zone. These facts are fully documented in the Libyan Memorial and its Technical Annex. However, depending on what comments Malta may have regarding the elements of Libya's scientific case as set forth in the Libyan Memorial, Libya reserves the right to supplement the scientific material already provided to the Court with such additional material as may be necessary to put the facts straight and to crystallise the issues for the Court.

2.71 Much of the discussion of the physical factors of geomorphology and geology regarded by Libya as directly relevant to the present case has emerged in the foregoing critique of Malta's treatment of these factors, which comes down to ignoring them almost completely and, instead, resorting to such mischaracterisations of the sea-bed and subsoil as "continuous" and as lacking in "incidental or unusual features". Nevertheless a short resumé is necessary.

2.72 The sea-bed and subsoil underlying the Pelagian Sea—the area of continental shelf relevant to the present delimitation—are divided into two units or blocks. The southern block—that is, the section of continental shelf south of the Rift Zone—is called in the Libyan Memorial the Pelagian Block. Geologically it also includes the land areas of the Jeffara Plain in Libya and the Sahel in Tunisia. The northern block — that is, the section north of the Rift Zone—includes the two banks protruding from Sicily, the Adventure Bank and the Ragusa-Malta Plateau (on which Malta is located), as well as the Gela Basin. This unit extends geologically to the edge of the African Plate, which cuts across Sicily[1]. The eastern boundaries of this area of continental shelf follow the line of the Escarpments-Fault Zone. They will be discussed in paragraphs 2.81 to 2.83 below[2].

2.73 The best way to describe succinctly the geological evolution of this area of continental shelf is to refer to the summary paper attached as Part II of the Technical Annex to the Libyan Memorial, quoting directly from paragraph 2.05 of that paper:

> "Starting about 10 million years ago, the northern part of the continental margin, including the Ragusa-Malta Plateau, dislocated from the African continental margin. This dislocation continues to this day along a complex fault zone defining the limit of volcanic activity observed on Sicily (referred to in the text of the Memorial as the 'Rift Zone'). The expression of this fault zone, which from several lines of evidence appears also to involve wrench or strikeslip faulting, is most apparent in the seafloor topography immediately southwest of Malta. Around the Late Neogene (approximately five million years ago), as part of this tectonic activity along the fault zone, the Ragusa-Malta Plateau and Malta were uplifted."

2.74 The geological phenomena described above created the major sea-bed features that comprise the Rift Zone. They consist of three deep troughs — the Pantelleria, Malta and Linosa Troughs — and their geomorphological and geological extension eastward along the Malta and Medina Channels to the Heron Valley where they link up with the Medina (Malta) Ridge[1]. The Malta Trough is the most pronounced of these features, being longer (87 nautical miles at the 1,000 metre isobath) and deeper (maximum depth 1,715 metres) than the other troughs. At the 1,000 metre isobath it has a width of 11 nautical miles. The Malta Trough crosses to the south of the Maltese Islands where it continues as the Malta Channel south of the Ragusa-Malta Plateau to the southern part of the Sicily-Malta Escarpment and the Heron Valley just as the Linosa Trough continues to the east out to the Heron Valley as the Medina Channel. The closeness of the Malta Trough to the Maltese Islands is reflected in the fact that the Islands were created as part of the same processes that produced the Trough and the other features of the Rift Zone. These features are intrinsically associated with the geography, geomorphology and the geology of the Maltese Islands.

---

[1] These units separated by the Rift Zone are illustrated in simple fashion on the Sea-Bed Model photograph facing p. 50. The African Plate boundary on the north is shown by the figure attached as Annex 11 to the *Libyan Memorial*. See also the simplified sketch based on the same sources which appeared as Fig. 4 in the *Libyan Memorial* in the *Tunisia/Libya* case.

[2] This eastern boundary was noted by the Court in para. 32 of its Judgment in the *Tunisia/Libya* case employing the terminology of the Parties to that case: "Ionian Flexure" and "Malta-Misratah Escarpment". In the *Libyan Memorial* in the present case the features comprising this eastern boundary were gone into in some detail and the boundary was referred to as the "Escarpments-Fault Zone".

2.75 It is the Rift Zone as a whole that is the aspect of prime relevance ⑧ to the present case. The interpretative diagram appearing as Figure 4 facing page 132 of the Libyan Memorial well illustrates the impressive extent and width of this Rift Zone[2]. The sea-bed expression of the Rift Zone reflects deep-seated *grabens* cutting through the subsoil to depths in excess of five kilometres. Young volcanics throughout the Rift Zone indicate what is also shown by seismic reflection and magnetic anomaly data that the Rift Zone is active today, stretching and shearing the subsoil. As is typical of Rift Zones, the bathymetric expression varies along its length: in some parts the rifting-wrenching process has caused deep troughs on the sea-bed; in other parts the bathymetric expression is less, as in the case of the Medina and Malta Channels. However, the geological importance of the Rift Zone is no less in one area than in another[3]. For example, between the Malta and Medina Channels to the south of the Ragusa-Malta Plateau can be found a volcanic mount, further confirming the continuity of the Rift Zone and its connection between the volcanic islands of Pantelleria and Linosa and the Heron Valley and Medina (Malta) Ridge.

2.76 In many respects, the Rift Zone is one of the first-order rift zones of the world (of which there are a limited number)[1]. One such example is the Red Sea Rift Zone as to which there has been a great deal of study and a high degree of agreement as to its importance. This rift zone now constitutes a boundary between two plates. In some portions the morphological expression is very marked; in others, such as the Dead Sea which is part of the same rift zone, the topographic expression is considerably less. It is the same kind of morphological contrast one finds between the Pantelleria, Linosa and Malta Troughs, on the one hand, and the shallower Medina and Malta Channels, on the other: the morphology varies but the whole area is part of the same Rift Zone. It clearly ranks among the major and relatively rare rift zones of the world[2]. In this connection, it is interesting to note that in the Saudi Arabia-Sudan delimitation agreement[3], the presence of the Red Sea Rift Zone appears to have been taken into account in the resulting solution. However, the relative rarity of such first order features means that they may not often be found to play a role in continental shelf delimitations. This brings out the particular relevance of such a feature if present in a given case and the striking nature of the Rift Zone in the present case.

---

[1] Detailed descriptions of the features comprising the Rift Zone appear in paras. 3.12-3.20 and 8.03-8.13 of the *Libyan Memorial*. They appear clearly on the bathymetric charts included with the *Libyan Memorial* and with this Counter-Memorial. They can also be seen on the Sea-Bed Model. All modern bathymetric charts of the Pelagian Sea show these features to be of major importance geomorphologically.

[2] See also para. 2.58, above, and *Map 4* facing p. 48.

[3] This fact is explained in para. 3.20 of the *Libyan Memorial* and illustrated by Fig. 2 facing p. 32 thereof.

2.77 The important oceanographic function performed by these troughs and channels was described in paragraph 2.10 of the Memorial of Libya. They serve as the main passage for saline Eastern Mediterranean water to pass out through the Western Mediterranean into the Atlantic Ocean. As there stated (citing numerous technical papers in support):

> "This ocean-type current flows in a strong near-bottom layer from east to west via the Malta and Medina Channels and the Pantelleria, Malta and Linosa Troughs. As it impinges upon the seafloor, it generates large sediment waves in the floors of the Channels. Exiting from the Mediterranean through the Strait of Gibraltar, the current produces an important warm intermediate layer stretching over a broad section of the Atlantic."

---

[1] Other fault or rift zones include: the East African Rift, the Rio Grande Rift, the Baikal Rift, the Rhine Valley Graben, the Hon Graben, the Godowari Rift Zone, the Red Sea Rift Zone, the Gulf of California and the Afar Rift. It must, of course, be recognised that each of the above features differs in many respects from the others; for example, the last three examples involve the formation of ocean floor rather than occurring in a continental setting. See SEIDLER, E. and JACOBY, W. R., "Parameterized Rift Development and Upper Mantle Anomalies", in *Tectonophysics*, 73 (1981), pp. 53-68. A "first-order" rift zone is one which is extending or has extended the continental lithosphere (or crust). In the case of the Red Sea Rift Zone this extension has been sufficient to begin to form an ocean floor.

[2] In somewhat more technical terms, the Rift Zone is an incipient boundary where continental crust has thinned owing to the pull-apart effect of the deep-seated *grabens* noted above. However, the extension of the earth's crust has not evolved to the point at which ocean crust has been created. It may be described as the beginning of a continental breakup. At the stage at which the Rift Zone now is, it is characterised by diffuse features.

[3] See the *Annex* of delimitation agreements, No. 37. *Map 5* facing this page illustrates this delimitation.

This "underwater river" in and of itself is a relevant circumstance in the present case following as it does the Rift Zone in carrying out its critical oceanographic role of helping maintain the equilibrium of the Mediterranean Sea[1].

2.78 Two other physical factors relating to the geomorphology and geology of the area of continental shelf in question remain to be summarised. The first factor is the tight morphological and geological connection of Malta with the Ragusa-Malta Plateau and with Sicily. This point has been recognised by Malta in paragraph 55 of the Maltese Memorial, where it was said that the Maltese Islands are "emergent parts of the Maltese plateau (sometimes called Ibleo-Malta Plateau)[2] which extends over a much greater submarine area than that suggested by their position". This geographical- geomorphological-geological tie of Malta to the Ragusa-Malta Plateau was given considerable emphasis in paragraphs 2.22, 2.23 and 3.38 of the Libyan Memorial[3].

2.79 The meaning of the last part of the sentence quoted above from paragraph 55 of the Maltese Memorial seems obscure but it appears to make the same point as was made in paragraph 3.38 of the Libyan Memorial that though Malta may be perched on the southwest edge of this Plateau its geographical and geomorphological connection with the Plateau and with Sicily is evident from any bathymetric chart (such as *Map 4* ⑪ and the IBCM). Moreover, the Plateau covers a sea-bed of approximately 14,000 square kilometres (based on the 200-metre isobath) compared to the 315 square kilometres comprising the Maltese Islands, a not inconsiderable area of adjacent continental shelf attached directly to these islands, being some 40 times the size of the islands themselves.

2.80 It has been noted above that the maps used by Malta, based on out-of-date British Admiralty charts[4], seem intended to negate what was said in paragraph 55, since they show a break in the 100-metre isobath giving the illusion of a channel dividing the area between Malta and Sicily.

---

[1] It has been estimated that between the 300 and 500 metre depth levels a flow of the order of 0.6 to 0.8 million cubic metres per second during the winter passes to the west along the channel created by the Rift Zone (MOREL, A., "Caractères Hydrologiques des Eaux Echangées entre le Bassin Oriental et le Bassin Occidental de la Méditerranée", *Cahiers Océanographiques*, Vol. XXIII, No. 4, pp. 329-343 at p. 341, 1971.) A copy of this page is attached as *Documentary Annex 4*. This could be compared to a major river like the Amazon which drains northeastern South America at a rate of about 0.18 million cubic metres per second. Comparative waterflow figures for the Rhine River and Mississippi River, which form boundaries between political entities, are .002 and .018 million cubic metres per second, respectively. (*New Encyclopaedia Britannica, 15th Edition*, Vol. 15, 1974, p. 877.)

[2] This feature was called in the *Libyan Memorial* the "Ragusa-Malta Plateau" and is given the name "Malta Plateau" on the IBCM.

① [3] *Map 1* facing p. 26, a reduction of an up-to-date British Admiralty chart, very clearly shows this fact brought out by Malta. So also does the Italian bathymetric chart referred to in fn. 3 to p. 25, above.

[4] See para. 2.11, above.

Although it is true that this whole area of sea between Malta and Sicily is often referred to as the "Malta Channel," since it (rather than the area south of Malta between Malta and Libya) is the major east/west shipping ⑪ channel in the Mediterranean, *Map 4* as well as the IBCM show no break in the 100-metre isobath and hence no break in the morphological connection of Malta to Sicily. Scientific evidence to the effect that in prehistoric and protohistoric times Sicily and Malta were connected by dry land, as well as the close parallels between Malta and Sicily geologically, are discussed in a number of scientific papers[1]. The connection between Malta and the Ragusa region of Sicily — both geomorphologically and geologically in terms of present-day surface rocks — is particularly well illustrated on the Carte Géologique et Structurale des Bassins (Tertiares du Domaine Méditerranéen) prepared by I.F.P.-C.N.E.X.O.[2], a portion of which has been reproduced as *Map 6* facing this page.

2.81 The final physical factors to be discussed relate to the features constituting the eastern boundary of the shelf area in question — underlying the Pelagian Sea — to the east of which is that part of the Central Mediterranean consisting of the Ionian Sea and the Gulf of Sirt which contains a number of distinctive geomorphological features: the Ionian Abyssal Plain, the Medina (Malta) Ridge, and the Sirt Rise, together with several sea mounts. *Figure 1* facing page 56 is a geological cross-section of this area of the Central Mediterranean from the land territory of Libya in the area of the Gulf of Sirt northward to the Ionian Abyssal Plain. (The location of the cross-section is shown on the small index map appearing in the lower right-hand corner of the *Figure*.) It is apparent that between the Libyan coast and the Ionian Abyssal Plain the sea-bed is unaffected by faulting as is the subsoil down to strata formed over 25 million years ago at depths ranging between two and three kilometres below the sea-bed. Thus, this area reflects real continuity from the land territory of Libya northward across the sea-bed and subsoil of the Ionian Sea and is very different from the areas underlying the Pelagian Sea, where the subsoil is sliced through by the Rift Zone and where the "trending relief", as noted in paragraph 56 of the Maltese Memorial, is northwest/southeast. It is instructive to quote from a recent paper of Professor Burollet in this connection:

---

[1] *Fauna*: Enay, R., *et al.*, "Faunes du Jurassique Supérieur dans les Séries Pélagiques de l'Escarpment de Malte (Mer Ionienne) Implications Paléographiques", *Revue de l'Institut Français du Pétrole*, 1982, Vol. 37, pp. 733-757. Kurten, B., 1968: *Pleistocene Mammals of Europe*, Weidenfeld & Nicolson, London, 1968.
Archaeology: Evans, J.D., "The Prehistoric Culture Sequence of the Maltese Archipelago", *Proc. prehist. Soc.*, 1953: pp. 41-94.
Geology: Grandjacquet, C., & Mascle, G., "The Structure of the Ionian Sea, Sicily and Calabria-Lucania", in Nairn, A.E.M., *et al.* (eds.): *The Ocean Basins and Margins 4B: The Western Mediterranean*. New York, Plenum, 1978, pp. 257-329; See also Pedley, H.M., "The Petrology and Palaeoenvironment of the Sortino Group (Miocene) of SE Sicily: Evidence for Periodic Emergence," *Journal of the Geological Society*, London, 1983, Vol. 140, pp. 335-350.

[2] *Editions Technip*, 1974, published by l'Institut Français du Pétrole (I.F.P.); le Centre National pour l'Exploitation des Océans (C.N.E.X.O.); and l'Institut National d'Astronomie et de Géophysique. The colour scheme shown on *Map 6* to depict the surface Miocene limestone on the Maltese Islands matches that appearing on this *Map* in the Ragusa Section of Sicily, thus demonstrating the correlation between surface rocks in these two areas. Such a correlation does not appear between Malta and other areas bordering on the Pelagian Sea. The scale of this map is 1:2,500,000. It should be noted, however, that the portion of the map appearing as *Map 6* has been slightly reduced.

> "By its morphological aspect and its geographical position, this rise [the Sirt Rise] represents a natural prolongation of Libya and should then in all likelihood come under the jurisdiction of this country[1]."

2.82 However, the physical features directly relevant to the present discussion are those that constitute the boundary between the Ionian Sea and the Sirt Rise to the east and the Pelagian Sea to the west[2]. The last illustration in the Libyan Memorial, a photograph of the Sea-Bed Model taken from the east[3], graphically reveals these features consisting of, *first*, the Sicily-Malta Escarpment running south along the east-facing coast of Sicily and the Ragusa-Malta Plateau to the Heron Valley, where it turns out eastward along the northern edge of the Medina (Malta) Ridge; *second*, the Medina Escarpment, which forms the eastern boundary of the Medina Bank and the Pelagian Block, a feature of geomorphological prominence to approximately the 33° 30′ N latitude; and *third*, from here south to the vicinity of Misratah on the Libyan coast, the Medina-Misratah Fault Zone, completing the eastern boundary of the Pelagian Block.

2.83 The Sicily-Malta Escarpment plunges in places to a depth of 3,000 to 3,600 metres in the narrow space of 15 to 18 kilometres. It turns eastward at the Heron Valley and the boundary is at this point assumed by the Medina Escarpment which trends almost northeast/southwest and is also a major geomorphological feature if not as pronounced as the Sicily-Malta Escarpment to the north. The Medina Escarpment has a maximum vertical drop of 1,200 metres and is approximately 87 nautical miles in length. It is of particular interest that these two Escarpments are intersected in the area of the Heron Valley by the Rift Zone. As noted above, Malta's Memorial, and in particular its trapezium figure, takes no note of these boundary features[4].

2.84 By way of summary, it should be said that features such as the Rift Zone and the line of Escarpments and Fault Zone have relevance to the present case just as do the coasts of the Parties and the relationships of these coasts. The setting of this delimitation includes the geomorphological features of the sea-bed and of the subsoil. No setting can be described as "continuous" or lacking in unusual features when characterised by these particular physical factors. The Court is presented in this case with a unique set of facts relating not only to geography but also to the geomorphology of the sea-bed and the geology of the subsoil. These physical facts are relevant to this case and relate both to the legal entitlement of the Parties to areas of the continental shelf lying between the Parties and to the delimitation of such areas between them. They bear directly on the question of which areas of shelf do, in fact, lie between the Parties and, hence, are relevant to the delimitation in the present case.

---

[1] BUROLLET, P.F., "Structure and Petroleum Potential of the Ionian Sea", in *Deep Offshore Technology Conference, 19/22 Octobre 1981, Palma de Mallorca, Proceedings*, Vol. I, pp. 1-11 at p. 6. A copy of this page is attached as *Documentary Annex 5*.

[2] These were described in detail in paras. 3.21-3.24 and 8.14-8.16 of the *Libyan Memorial*.

[3] A similar photograph is contained in the pocket section of Vol. III of this Counter-Memorial.

⑰ [4] See *Map 18* facing p. 166, below.

84

CHAPTER 3

ECONOMIC AND OTHER CONSIDERATIONS INTRODUCED BY MALTA

A. Economic Considerations

3.01 As was observed in the Introduction to this Counter-Memorial, the quite extraordinary emphasis placed on economic considerations in the Maltese Memorial — though without relevance to the question of continental shelf delimitation — requires Libya to deal with some of these assertions of Malta in both their legal and their factual aspects. In so doing, Libya will draw the Court's attention to what Libya regards as misleading impressions and errors of fact contained in this material put forward by Malta.

1. Apportionment of Natural Resources

3.02 In spite of the recent findings of the Court in its 1982 Judgment that "economic considerations cannot be taken into account for the delimitation of the continental shelf areas appertaining to each Party[1]", at the very beginning of the Maltese Memorial (paragraph 4) it is asserted that this case is really about "access to natural resources" and that within the limited territory of Malta "there are no natural resources whatever". This theme of lack of natural resources recurs in various parts of the Maltese Memorial, often linked with statements regarding the relative economic position of each State, a matter to which subsection 2 below will be devoted. For example, in listing the "equitable principles and relevant circumstances of particular relevance" to the present case, Malta states in paragraph 234(f): "Economic considerations are to be taken into account with particular reference to the absence of land-based energy sources in Malta". The subject is given special emphasis in paragraphs 224 and 225 of Malta's Memorial, presumably to get around the words of the Court in paragraph 107 of the 1982 Judgment that economic considerations must be ruled out of consideration because they are "variables" subject to "unpredictable national fortune or calamity" and because a country "might be poor today and become rich tomorrow as a result of an event such as the discovery of a valuable economic resource[1]". For Malta asserts in paragraphs 224 and 225 that its lack of natural resources is not a variable and hence that the Court's above-quoted dictum does not apply to the present case. As stated in paragraph 224, the " ... absence of oil, coal and hydro-electric sources is not speculative but is a fact, a permanent state of deprivation[2]".

---

[1] *Continental Shelf (Tunisia/Libyan Arab Jamahiriya), Judgment, I.C.J. Reports 1982*, p. 77, para. 107.

[2] "Deprivation" is a relative term. In Malta's sense, as *Table 7* facing p. 68 below reveals, Hong Kong and Singapore might be regarded as "deprived".

3.03 There are a number of points to correct in this argument. *First*, the analogy to the *Fisheries Jurisdiction* case in paragraph 225 is wrong since that case involved neither a delimitation situation nor the continental shelf[1]. *Second*, in the areas of continental shelf constituting the Ragusa-Malta Plateau to the north and east of Malta there has been a renewal of interest in the light of promising oil finds made recently by Italy in the area abutting Sicily[2]. It is by no means certain that Malta will be permanently deprived of petroleum resources. *Third*, the Maltese statement that this factor involves an invariable is rather myopic and one-sided. The continued availability of petroleum resources to Libya is certainly a variable factor. At the very time that Libya will be experiencing a rapid increase in population, its main economic resource—oil—will be a rapidly diminishing asset. Oil is a finite resource. It has been exploited in Libya since 1961. Very few major new additions to reserves have been discovered in the last decade. Most oilfields have passed their peak production[3]. Libya's reliance on offshore production in the continental shelf might therefore be said to be more critical than that of Malta, which has a much more varied economy. *Fourth*, though Malta may lack on-land mineral resources, it is not without other natural resources. Its climate and location have led to a large, profitable tourist trade. Its location has led to rewarding ship repair work.

2. General Economic Factors

3.04 Like the absence of natural resources, the poor-Malta, rich-Libya theme permeates Malta's pleading. Since the Court has so clearly and so recently ruled out such a factor as a relevant circumstance in delimiting the continental shelf, Malta has turned to the *Anglo-French Arbitration* for support. In paragraph 222 of the Memorial of Malta it is said, quoting from paragraphs 184, 185 and 239 of the Decision in that case, that the "Court of Arbitration recognised the significance of the economic, as well as the political, status of the Channel Islands". There is validity to the point that the Court of Arbitration considered economic and political factors. The Court could not avoid a full discussion of these factors since the parties presented extensive evidence to it on these subjects and they were discussed at great length in the oral pleadings before that

---

[1] *Fisheries Jurisdiction (United Kingdom v. Iceland), Merits, Judgment, I.C.J. Reports 1974*, p. 3. No determination of exclusive rights was in question. Moreover, the coastal fishing involved (not a continental shelf resource in any event) was a resource on which the coastal State was highly dependent and whose exploitation was of long standing.

[2] Petroconsultants S.A., *Annual Review 1979, Malta*, January 1980, p. 5. A copy of this page is attached in *Documentary Annex 2*.

[3] Of total world proven oil reserves, Libya possesses a mere 3.4%. OPEC, *Statistical Bulletin, 1981*, Vienna 1982, p. 9. A copy of this page is attached as *Documentary Annex 6*.

Court. These arguments had to be disposed of in the Court's Decision. However, economic considerations ultimately were not a factor that played a role in that case[1].

3.05 But leaving the law to one side, Malta also has the facts wrong. It is necessary here, therefore, to give the Court a more complete picture without going into too much detail, even if these facts of comparative economics are not relevant circumstances of the case.

3.06 There are deep differences between the economies of Libya and Malta. It is only at the most superficial level that Libya appears to be better placed than Malta, namely in respect of Gross Domestic Product ("GDP") per head of population[2]. Neither State can be classified as poor. *Table 1* following this page comparing the Gross National Product per head of Malta with other middle-income oil importing and exporting countries makes the same point. By any standards Malta is among the more prosperous developing nations of the world.

3.07 It is not an exaggeration to indicate that in terms of economic structure Malta is considerably more mature than Libya. Its composition of production of goods and services is quite diversified[3]. This situation is reflected in the strong position of the productive sectors in the economy, accounting for 45% of total GDP in 1979 and 42% in 1980. Libya, on the contrary, has an economic structure that is dominated by a single sector — oil. Even the most optimistic estimate shows the oil sector accounting for 45.5% of GDP in 1980, when the productive sectors were responsible for only 5.7% of GDP, equivalent to $632 per head of population.

3.08 Despite the small surface area of Malta and the inhibitions on agricultural output arising from limited supply of land and water, the agricultural production per head of population there was valued at $117 against that of Libya at $218 in 1980. In the case of the most dynamic of the elements making up the total industrial production of the two States —

---

[1] In addition, as noted in para. 4.35, below, the Court's analysis was related to the question of these islands' rights to continental shelf of their own vis-à-vis France.

[2] This crude measure apparently shows Libya with an income per head of some $8,450 in 1981 against $3,380 for Malta, though assessment of national accounts in both countries is not entirely precise. Government of Malta, *Economic Survey 1981*, Economic Division, Office of the Prime Minister, May 1982, "Basic Statistics". A copy of this page is attached in *Documentary Annex 7*.

[3] As the *Maltese Development Plan 1981-1985*, Malta, Guidelines for Programs, points out at p. 1:

> "Since the early fifties ... national economic policies have been consistently geared towards the long-term development goal of a new economic structure. This process has, on the whole, registered a considerable degree of success which has even surpassed initial expectations. ... The productive base of the economy has expanded with the creation of an export-based industrial sector, a large-scale tourist industry and a successful switch to commercial ship repairing."

A copy of this page is attached as *Documentary Annex 8*.

manufacturing[1]— the output in Malta in 1980 was valued at $1,013 per head against $229 in Libya. In respect of the large service sectors represented in Malta and Libya there is a qualitative difference to be noted. Virtually all the services in Libya are attributable indirectly to the oil sector. Few services are of a commercial nature and all are funded by the State. In Malta, in complete contrast, commercial services are a major area of activity. Approximately 41% of GDP in 1980 was generated by market services in Malta, mainly in the private sector[2].

3.09 The comparatively mature structure of the Maltese economy as compared to the Libyan economy is further demonstrated by the distribution of the labour force in Malta. No less than 35% of the active work force in Malta was employed in agriculture, manufacturing, ship repair and other private industries in 1980. Total employment for agriculture, manufacturing industry and fisheries in Libya in the same year accounted for only 26% of all actively employed persons, of which approximately one-third were non-Libyans. In general, Malta generates wealth and employment from industry, commercial services, tourism, agriculture and its expatriate community. Libya has only oil and income from invested oil revenues.

3.10 Malta's Memorial also ignores the question of population. Libya is now facing high population growth. In the period from 1970-1979 the rate of growth of population averaged 4.1% each year. The indigenous population grew at 3.9%, one of the highest rates of natural population increase in the world. This rate is expected to continue well into the 1980s[3]. In contrast, Malta has a small population the rate of growth of which appears to be in decline[4]. This rate has rarely gone above half of one percent per year in the last 25 years. Some returned immigrants have had to be absorbed, though this has been on a very small scale and has been balanced by out-migration over the period as a whole.

---

[1] World Bank, *World Development Report 1981*, p. 139: "Manufacturing is part of the industrial sector, but its share ... typically is the most dynamic part of the industrial sector." A copy of this page is attached as *Documentary Annex 9*.

[2] Government of Malta, *Economic Survey*, Economic Division, Office of the Prime Minister, Aug. 1981, p. 7. A copy of this page is attached as *Documentary Annex 7*. Tourism plays a particularly important role in developing the commercial character of the service sector in Malta, with the added bonus that most tourist earnings are taken in foreign exchange. See *Table 2* facing this page.

[3] Secretariat of Planning, Tripoli, *Summary of the Socio-Economic Transformation Plan 1981-1985*, p. 54. A copy of this page is attached as *Documentary Annex 10*. The estimated total population of Libya for 1983 is 3.4 million. The 1977 Libyan population was 2,939,200.

[4] METWALLY, M.M., *Structure and Performance of the Maltese Economy*, Malta, Aquilina & Co. 1977, p. 39. A copy of this page is attached as *Documentary Annex 11*.

3.11 The best conclusion to this subsection would seem to be to repeat what Libya said on this subject in paragraph 6.88 of the Libyan Memorial in the present case, citing paragraphs 62 and 73 of the Judgment in the *Tunisia/Libya* case[1]:

> "It may be suggested that the irrelevance of such arguments derives not only from the relative and variable nature of national wealth but also from the fact that such considerations have nothing whatever to do with the physical facts of prolongation of the land territory into and under the sea and the geographic correlation between landmass and sea-bed which is the basis of title".

3. Fishing

3.12 It is evident that the Maltese Memorial accords fishing activity a major role in the present case and regards it as one of the "relevant circumstances of particular relevance". In paragraph 234(h) it is said that "the patterns and range of established fishing activity are to be given weight as a relevant equitable consideration". The same sentiment is expressed in the concluding paragraph 272 dealing with the "principal considerations justifying Malta's delimitation" (in subparagraph (m) thereof) in the following terms: "The relevant equitable considerations include ... the range of established fishing activity ...". The most complete statement of Malta's position is perhaps contained in paragraph 231, which is quoted below in full:

> "In view especially of the close link existing in modern international law between continental shelves and exclusive economic zones, factors which are relevant to the exploitation of biological resources must be given weight as an equitable consideration. Some reference has already been made to the established patterns of Maltese fisheries stretching southwards to the equidistance line and even beyond it."

3.13 Such statements which are based upon the "patterns and range of established fishing activity" of Malta require an examination of the facts. Some facts can be found in paragraphs 41 to 46 of the Maltese Memorial including a description of the *kannizzati* method of fishing and a brief discussion of longline, bottom longlining and trawling in regions extending beyond the Medina Bank. It is said that individual series of *kannizzati* "may stretch over an extended distance and many of them have for some years stretched as far as the equidistance line between Malta and Libya, and even beyond". It is further said that this method stems from fishery regulations dating back to 1909 and hence is "of considerable antiquity" and that this method accounts for as much as 40% of Malta's total catch. Maps 4 and 5 in Volume III of the Maltese Memorial are claimed to illustrate this method of fishing. As to longline fishing for swordfish and tuna and bottom longlining and trawling for bottom fish, it is said in paragraph 46 that the location of the fishing banks is a closely guarded secret of individual fishermen but that it has been going on in the Medina Bank and that trawling grounds "on the 100 and 200 fathom line in the south attract a sizeable number of craft in the winter months". No indication is made of the nationality of such craft. Map 5 is said to indicate the areas where trawling by Maltese fishermen takes place.

---

[1] *Continental Shelf (Tunisia/Libyan Arab Jamahiriya), Judgment, I.C.J. Reports 1982*, p. 54, para. 62 and p. 61, para. 73.

3.14 It must be stressed at the outset that this fishing bears no relation to the continental shelf, that the fish in question are mobile species and not a continental shelf resource, and that the Maltese fishing activities described might only have relevance to any Exclusive Economic Zone of Malta[1]. (To date, Malta has claimed no Exclusive Economic Zone but has legislated for a 25-mile fishing zone around the Maltese Islands measured from its base lines.) Thus the inescapable conclusion must be that Malta's assertions quoted above as to its fishing activities being a relevant circumstance of the present case are legally invalid. But it may be instructive not to leave the matter at this and to examine some of the actual facts regarding Maltese fishing.

3.15 From a reading of the Maltese Memorial the impression may have been formed that fishing is important to the Maltese economy, that traditionally it has covered a considerable extent of the maritime regions around Malta, and in particular the Medina Bank, and that those regions (depicted on Malta's maps) have been fished exclusively by Maltese fishermen and have traditionally been within their domain. If so, the impression is false. In fact, fishing is marginal to the Maltese economy and has always been so. It is an activity that today, despite recent government and international efforts to revitalise it, is on the decline. Furthermore, it is still dominated by traditional inshore practices that make more distant regions unattractive to most fishermen. More significantly, the modern sector of fishing is still under foreign control and the areas used by Maltese fishermen are by no means confined to them, particularly in deep sea fishing; the fishermen of other Mediterranean States have all traditionally used the same grounds as Malta.

3.16 The role of fishing within Malta's economy is best demonstrated by its contribution to Malta's GDP as shown by *Table 3* facing this page, where agriculture and fisheries have been combined. Fishing provides less than ten percent of the contribution made by agriculture and fisheries together and no more than one third of one percent to GDP[1]. It is clearly marginal within the Maltese economy.

---

[1] See, in this connection, para. 100 of the 1982 Judgment of the Court in the *Tunisia/Libya* case (*Continental Shelf (Tunisia/Libyan Arab Jamahiriya), Judgment, I.C.J. Reports 1982*, pp. 73-74, para. 100). The delimitation of the continental shelf in the present case does not prejudge delimitation of the Exclusive Economic Zone (or fishery zone). See also *Libyan Memorial*, para. 4.63, where it was noted that Malta opposed inclusion of delimitation of the EEZ in the Special Agreement.

3.17 Even more striking is the fact that fisheries have been maintained at a more or less constant level for decades, despite the efforts made to improve the fishing fleet, particularly since 1970. The landings of fish, by weight, from 1938 onwards, are shown on *Table 4* facing the preceding page. Until 1975, the shortfall in fresh fish was made up by imports. These have now stopped, although the demands of the tourist trade still require frozen fish imports which are as great as, if not greater than, local fresh fish landings[2]. These facts must be seen against the background of the proposals of the Maltese 1973-1980 Development Plan, which proposed major expansions in fishing by encouraging more coastal fishing and creating a trawler-based fishing fleet for deep-sea fishing. It also provided for a joint commercial company to be founded with Libya, in the hope that this would stimulate local demand and production[3]. In addition, a joint fishing company was established with Libya and special aid was offered to fishermen[4].

3.18 The same holds true when the size of the fishing labour force and of Malta's fishing fleet is considered. The relevant statistics are set forth in *Tables 5* and *6*. Although the figures in the 1970s and 1980s appear to suggest a growth in fishing population numbers, the critical figures are those for full time fishermen which have consistently fallen since the Second World War. The part timers in 1980—67% of the total—were also occupied full time in employment in government sectors or in private industry. Very few were involved in agriculture in addition to fishing — the traditional combination in the past — and the split between government and private sectors was almost equal. It is clear that part time fishing is merely an income supplement. In fact, given the very low per capita consumption of fresh fish landed in Malta — 4 kilograms per person annually — it would be difficult for part time fishing to be anything else.

---

[1] In fact, of the total contributions from agriculture and fisheries, the total sales value of fisheries in 1981 contributed just £M one million. The 1980 figures were comparable. In 1979 fishing contributed £M954,570 and in 1976 the figure was £M915,282, out of an agriculture and fisheries total of £M9.6 million. Department of Information, *Malta Handbook*, Government Press (1981), p. 84; *Malta Handbook*, Government Press (1977), p. 125. A copy of these pages is attached as *Documentary Annex 12*.

[2] Economic Division, Office of the Prime Minister, Malta, *Guidelines for Progress (Development Plan 1981-1985)*, Government Press (Valletta), 1981, p. 149. A copy of this page is attached as *Documentary Annex 13*.

[3] *Development Plan for Malta 1973-1980, Supplement*, Office of the Prime Minister, p. 71. A copy of this page is attached as *Documentary Annex 14*.

[4] *Malta Handbook*, 1981, *op. cit.*, p. 84. A copy of the agreement establishing a fishing company between Libya and Malta is attached as *Documentary Annex 15*. A copy of the agreement referring to a joint fishing venture between the two countries is attached as *Documentary Annex 16*.

3.19 A similar conclusion arises from a consideration of the numbers of boats involved in the Maltese fishing fleet also illustrated by *Table 6*. This shows that, despite all the efforts of the Maltese Government, the fleet continues to be dominated by small open inshore fishing boats under 12 metres in length. Trawling or motorised fishing boats are a small minority. The situation is little different from that described by Burdon in 1954, when he remarked that the Medina Bank could only be used for trawling but there were only four boats capable of trawling there and that the 800 fishermen then engaged in Maltese fishing activity were limited, by their equipment and training, to inshore fishing, not even being able to reach Lampedusa[1]. As late as 1970, an FAO report on fishing in Malta reported that Maltese deep sea fishing was dominated by foreign fishermen and the produce was sold, by preference, to Sicily[2].

3.20 The minor importance of fishing within the economic and social life of Malta is reflected in the extent of Maltese fishing and the location of the fishing grounds. Until very recently the Medina Bank was out of range to all boats except those over 18 metres in length, and in 1982 there were only 19 such vessels: six trawlers and thirteen motorised fishing vessels. In any case, only one-fifth of the total catch was obtained during the winter[3], so that the winter fishing referred to in the Memorial of Malta is of minor importance. In fact, 60% of all boats can only be used for inshore fishing and the most intensively fished areas lie within the 50 fathom line. Even the long-range *kannizzati* sites tend to be limited to 40 miles off the Maltese coast, while longlining is usually limited to 40 miles offshore and lampara fishing to five miles offshore. Thus the claimed maximum extent of fishing of 150 miles has little relevance to either traditional fishing practices or the practices of the contemporary industries. In any case, the long distance fishing mentioned in the Maltese Memorial is often undertaken by foreign crews working out of Malta who may not even sell their catch there, but in Sicily[4].

3.21 The location of fishing grounds shows a similar pattern of closeness to Malta and division between Maltese and foreign fishermen. Maltese fishermen tend to concentrate on fishing grounds to the north and east of Malta and to the coastal areas close to the Zurrieq, Marsalokk and Marsalforn sectors — which they share with Italian fishermen. The more distant grounds — around Pantelleria, Lampedusa, the Medina Bank and to the south of Malta — are the almost exclusive preserve of non-Maltese fishermen. For the Maltese, the most usual non-coastal fishing areas lie to the northeast of the Maltese Islands, at the Hurd Bank and Sikka l-Badja, just to the north of Gozo. The only recent development that has altered this pattern is that trawling now occasionally takes place around the Medina Bank and Lampedusa, a fishing activity engaged in by fishermen of a number of Mediterranean countries.

---

[1] BURDON, I.W., *Report on the Fishing Industry of Malta*, Government Printing Office, 1954, p. 9. A copy of this page is attached as *Documentary Annex 17*.

[2] *Report to the Government of Malta on Fisheries Development*, F.A.O., Rome, 1970, TA 2899. A copy of the relevant page is attached as *Documentary Annex 18*.

[3] *Malta Handbook*, 1981, *op. cit.*, p. 84.

[4] F.A.O., *op. cit.*, 1970.

3.22 The relative importance of inshore fishing to Malta is emphasised by the very strict control exercised by the Maltese coastal authorities over the area claimed as an exclusive zone. Since 1966, this zone has extended from 3 nautical miles offshore to 12 miles in 1971, 20 miles in 1975 and 25 miles in 1978. Although Maltese patrol craft do occasionally range as far afield as the Medina Bank, this is only as part of navigational training, and any arrests carried out beyond the exclusive limit are performed under the provisions of international law and are related to pollution offences, not fishing.

3.23 Given the marginal character of Maltese fishing, it is instructive to consider fishing practices in Libya — where, until recently, fishing represented a resource that had been largely ignored. Unlike the Maltese example, fishing in Libya has shown a steady progression ever since 1951[1]. In addition, there has been a conscious effort to increase the size of the Libyan fishing population[2].

3.24 The increase in landings also relates to the increase in modern fishing techniques, introduced through a series of government-based investment initiatives and joint ventures with a number of States including Tunisia and Greece[3]. In fact, considerable investment is to be made in fishing over the next decade to ensure that Libya has a compact and efficient fishing industry, capable of exploiting the waters of the Central Mediterranean by the end of the century.

4. Malta's Status as an "Island Developing Country"

3.25 From the lengthy treatment given "the requirements of Malta as an island developing country" in the Maltese Memorial, it is apparent that this factor also constitutes a significant element in Malta's case. The paragraphs principally dealing with this subject are paragraphs 226 to 230 which take up almost four pages of the Memorial, a far more extensive coverage than was accorded the facts relating to geography and the sea-bed and subsoil of the continental shelf, for example. In paragraph 234(g) of the Maltese Memorial it is said that Malta's status as a developing island country is a "further relevant consideration, related to the absence of land-based energy resources in Malta, especially in view of the abundance of such resources available to Libya ...". And in summarising the principal considerations justifying Malta's delimitation in paragraph 272 there is included in subparagraph (m) the statement that the "relevant equitable considerations include ... the requirements of Malta as an island developing country ...".

---

[1] From catches of between 2,000 and 3,000 tonnes in the 1950s, it has risen to 3,500 tonnes in the 1960s and 4,000 to 5,000 tonnes in the 1970s. It is proposed to reach a level of between 8,000 and 12,000 tonnes by 1995. ANDERSON, E. W. and BLAKE, G. H., "The Libyan Fishing Industry", in (ed.) ALLAN, J.A., *Libya since Independence*, Croom Helm, 1982, pp. 73, 74, 76. A copy of these pages is attached as *Documentary Annex 19*. See also the discussion of Libyan fishing in the *Libyan Counter-Memorial* in the *Tunisia/Libya* case, Technical Annex No. 3.

[2] From 500 in 1973, to 800 in 1975 and an estimated 1,200 in 1981. Of them, more than two-thirds are Libyan nationals.

[3] ANDERSON AND BLAKE, *op. cit.*, p. 76.

3.26 After a review of the various studies, declarations and resolutions over the past decade recognising the special category of "island developing country" — a rather selective review it must be said as will be demonstrated below — the Maltese Memorial in paragraph 230 concludes with this rather inspirational message to the Court:

> "In the context of continental shelf delimitation, the absence of land-based resources, coupled with the presence of petroleum in the area in issue, provides substantial justification for the view that the development requirements of Malta constitute an equitable consideration or factor to be given weight in the delimitation of the shelf areas dividing Malta and Libya. The Government of Malta is confident that the Court, as the principal judicial organ of the United Nations, will readily recognize the relevance of the practice of the organs of the United Nations and of the Member States in relation to island developing countries."

3.27 Before proceeding to take a detailed look at the documents referred to by Malta — and those not mentioned — as well as the facts bearing on Malta's status, it is important to address the above statement of Malta head on. The preamble to the United Nations Convention on the Law of the Sea does indeed take note of "the special interests and needs of developing countries, whether coastal or land-locked" but not of "island developing countries". Although certain categories of States are singled out in the provisions of the Convention — such as land-locked States, States bordering enclosed or semi-enclosed seas and archipelagic States — nowhere is any mention made of "island developing countries". Nor is there, to Libya's knowledge, any indication in the *travaux préparatoires* of the Convention that any special status or rights were sought for "island developing countries". (If there were, the case against any such status in connection with rights relating to the law of the sea would be even more conclusive, if that is possible, in view of the absence of any mention of this category in the text of the Convention.) It is, thus, hardly appropriate for Malta to call on the Court to recognise a factor that, in spite of its recognition in various resolutions of the United Nations and its organs in particular contexts, was not given any recognition in the United Nations Convention on the Law of the Sea adopted in 1982. In the very legal context in which this case is before the Court — the law of the sea — the member nations of the United Nations adopted by a very large majority a Convention and did not include any special recognition of island developing countries. It is suggested that this is the important relevant fact to be brought to the attention of the Court as the principal judicial organ of the United Nations.

3.28 In addition, although the Convention clearly had in mind the situation of disadvantaged States in providing for the "Area" which, with its resources, is declared to be the "common heritage of mankind", it made no special provision for various categories of States either in the "Area" or in the other régimes provided for — such as the continental shelf and the exclusive economic zone — except as specifically recognised in the Articles of the Convention. It is, therefore, quite surprising to find Malta asking the Court to do what an overwhelming majority of the member nations of the United Nations did not do in adopting provisions directly related to the subject matter before the Court in the present case.

3.29 It is now appropriate to examine the other documents cited by Malta in its Memorial and in Annex 68 thereto. What Malta has done in its discussion of United Nations resolutions and references to the work of the United Nations Conference on Trade and Development (UNCTAD) is to be selective: for example, the UNCTAD Resolution 65 (III) of 1972, one of the first international instruments to recognise a special status for island developing countries, is mentioned[1], but its provisions are not stated. Indeed, this Resolution in its preamble indicates the main concerns which led to the recognition of such a category of States:

> "*Recognising* that the developing island countries face special problems linked to their geographical nature such as, among others, major difficulties in respect of transport and communications with neighbouring countries and the distance from market centres, and are seriously hampered in their economic development, and that studies are needed in respect of these developing island countries which should take fully into account overall prospects for, as well as existing levels of, development...".

The Resolution called for the appointment of a panel of experts to—

> "... identify and study the particular problems of these countries and to make recommendations thereon, giving special attention to the developing island countries which are facing major difficulties in respect of transport and communications with neighbouring countries as well as structural difficulties, and which are remote from major market centres, and also taking into account overall prospects for, as well as existing levels of, development".

It is evident that Malta is not faced with these kinds of problems.

---

[1] *Maltese Memorial*, para. 228(i). The text is not to be found in the Maltese Annexes.

96

3.30 Resolution 65 (III) set the tone for what was to follow. The expert study called for in Resolution 65 (III) is only cited in the Maltese Memorial for the proposition that Malta is "small in territory and very small in terms of population[1]". Yet, this study was very detailed and was accompanied by five general tables and a statistical annex of 17 tables. What these tables show is that Malta's situation does not correspond at all to that for which the special category of developing island country was created[2].

3.31 Another example of the incomplete picture given by Malta is to be found in Chapter III of Document TD/191 of UNCTAD[3], referred to in Annex 68(ii) of the Maltese Memorial. This Chapter deals with special measures for island developing countries which are geographically disadvantaged. This very characterisation hardly fits — Malta's geographical location cannot be regarded as a disadvantage. Listed in Chapter III are situations where special measures need to be considered for such islands. They include, for example, islands far away from international traffic routes and where exterior communications are difficult; where the development of air service has been neglected and where it might be used to spur tourism; and where exposure to natural catastrophies is a particular problem. It is hard to see how Malta fits into these categories. The special measures envisaged in favour of geographically disadvantaged island developing countries essentially concerned the small, poor, isolated island States in the Pacific Ocean.

3.32 All pertinent tables to that document are not cited, although Table 23, which lists Malta as small in terms of territory and very small in terms of population, is annexed to the Maltese Memorial[4] and cited in footnote 2 to paragraph 227. However, the attention of the Court is not drawn to the fact that Malta is classified there among the islands with the highest G.N.P. per capita. Nevertheless, it is apparent that Malta has derived substantial benefit from its classification as an island developing country. The Report of the Secretary-General to UNCTAD of 28 June 1977 contains an annex showing the extensive assistance given to Malta in connection with development of port and ship repair facilities and fishing, the latter amounting to $738,400[5].

3.33 But the major factual point to be made here is that, though Malta has claimed and receives special treatment and assistance from the United

---

[1] *Maltese Memorial*, para. 228(i).

[2] *Developing Island Countries*, U.N. Doc. TD/B/443/Rev.1, 1974. A copy of these tables is attached as *Documentary Annex 20*. Of special interest are, for instance, Table V showing Malta with 14.7 doctors per 10,000 inhabitants and Table VIII showing that of Malta's exports, clothing comprises 23.8%, textiles 14.4% and rubber articles 9.3%.

[3] Report by the UNCTAD Secretariat, U.N. Doc. TD/191, 6 January 1976.

[4] *Maltese Memorial*, Annex 68.

[5] U.N. Doc. A/32/126, 28 June 1977, annex at p. 9. A copy of this page is attached as *Documentary Annex 21*.

Nations and UNCTAD as an island developing country, Malta is not a poor island in the traditional meaning of the term. Its economy cannot be compared with islands such as Haiti, Sri Lanka or Madagascar. The pertinent analogies are with much better off islands such as Hong Kong and Singapore. This is shown by *Table 7* facing the preceding page.

3.34 Malta is also clearly differentiated from the island economies where special provision is justifiably made for special economic treatment. Whereas such islands often have single commodity economies dependent on crops such as sugar, tea or tropical raw materials, Malta, as shown earlier, has a diversified economy based on its manufacturing industry, ship repair, tourism and commercial services. Unlike almost all other island States mentioned above, Malta has no worsening population problem. The internationalisation of the Maltese economy applies to all sectors of activity and not to single primary commodities as in most other developing island countries. Malta does face genuine problems in stimulating consistent levels of economic development, but these are different by a large measure from those of the poorer States and would seem to preclude Malta on any rational grounds from claiming the protection of any notional concessions due from the international community to the really poor developing countries of the world, some of which are islands. In any event, none of this can affect delimitation of the continental shelf.

B. Other Considerations

3.35 As in the case of economic considerations, the Maltese Memorial has introduced other factors which are not relevant to the present case. However, here too, the law and the facts relating to these points must be addressed by Libya in this Counter-Memorial and, where necessary, put straight. It is also noted that there exists a close tie in the Maltese Memorial between the elements of national security and neutrality even though they are dealt with separately below.

1. The Element of National Security

3.36 In its list of alleged relevant circumstances Malta includes the following (paragraph 234(i)): "The element of national security involved in control of the adjacent submarine areas also constitutes a relevant consideration". In paragraph 272(m) it is referred to as the "element of national security in maintaining control of adjacent submarine areas, a consideration the importance of which is enhanced by Malta's status of neutrality". Although it is difficult to locate with certainty every mention of security considerations in the Maltese Memorial, the matter is also dealt with in paragraphs 143 to 149 and in paragraph 232. In the first group of paragraphs it is tied to the claimed "legal relevance of the political status of islands" and the "position of the island State". (The matter of the lack of relevance of the political status of an island in the

2

case of delimitation of the continental shelf is taken up in subsection 3 below.) However, Malta then proceeds to make the following miscellaneous but unrelated points:

- paragraph 73 of the Judgment in the *Tunisia/Libya* case is quoted in full to establish: "The connection between the sovereignty of the coastal State over its land territory and its rights in respect of the shelf";
- relying in part on the *Aegean Sea Continental Shelf* case and the *Rann of Kutch Arbitration*, it is suggested that the "position of the island State is one of particular sensitivity" and that the "legal interaction of land territory and sovereign rights over submarine areas is much more critical than it is for most other coastal States[1]";
- then the alleged parallel between coastal fisheries in adjacent waters (not a continental shelf resource) and Malta's interest in the "prospect of petroleum resources of the appurtenant shelf areas" is drawn;
- finally (paragraph 149), there appears the following assertion:

> "In this litigation Malta is seeking the legal affirmation and protection of important aspects of her national patrimony and in particular the sovereign rights to govern, manage, exploit and conserve the resources of appurtenant shelf areas. The method of equidistance provides a delimitation which gives appropriate recognition of the need for an adequate political control, both as to the quality and extent of such control, by the island State of Malta in respect of adjacent submarine areas. The coast of any State generates appurtenant zones of maritime jurisdiction. The distance criterion, which is prominent in recent sources of the law of maritime delimitation, is a reflection of the rule that all coastal States have a lateral reach of jurisdiction. Such an apron of jurisdiction is a necessary attribute of national security. The equidistance method thus gives effect to the logic that Malta's need for security is no less than that of Libya."

3.37 The "apron of jurisdiction" must have been considered a winning phrase: it reappears in paragraph 232 where the following assertions appear, quoted in full — a sort of hodgepodge of points:

---

[1] At this point (para. 147), the absence of natural resources reappears: "Moreover, the relationship with the appurtenant shelf areas has an enhanced significance in cases like that of Malta, that is to say, when land-based resources are minimal and the shelf is the only possible location of the resources."

> "The apron of jurisdiction which a coastal State has over adjacent submarine areas constitutes a necessary attribute of national security. The importance of the exercise of political authority by the coastal State has been emphasized already in this Memorial and it only remains for Malta to point out that security interests form a relevant consideration for purposes of an equitable delimitation of appurtenant shelf areas. For purposes of control and the maintenance of security, Malta has a need for a lateral reach of control from its coastline which cannot be less than that of Libya. Moreover, the importance of this consideration is increased substantially as a consequence of Malta's status of neutrality. It is, of course, obvious that the need for security, reflected in the lateral reach of jurisdiction, bears no relation to the *length* of the coasts of the particular State[1]."

3.38 We find in all of this some colourful phrases — but no facts. Moreover, it is evident that alleged considerations of "national security" are yet another device to deflect attention from the physical factors of geography and geomorphology. It even seems from the above quotations to be the view of Malta that an island State may be in a preferred position.

3.39 In its Memorial, Libya dealt with the possibility that security interests might to a limited extent be relevant in a case of continental shelf delimitation (see paragraphs 6.77 and 6.78) citing the Decision in the *Anglo-French Arbitration*. But in that case it was made clear in paragraph 188 that security interests "may support and strengthen, but they cannot negative, any conclusions that are already indicated by the geographical, political and legal circumstances of the region ...". Thus, it was concluded in that case that security interests played a secondary, supporting role and not one to overrule or outweigh the relevant circumstances of the case. The difficulty with the assertions of Malta in this respect is that they are set forth devoid of any factual support. In 1978, Malta established by legislation the extension of its territorial waters to 12 nautical miles, the extension of its contiguous zone to 24 miles and the extension of its contiguous fishing zone to 25 nautical miles, all measured from its baselines (see paragraph 4.10 of the Libyan Memorial). But in its Memorial Malta nowhere establishes factually a need for the assertion of security interests *in the continental shelf*. Bearing in mind that it is not the column of water—which is the primary concern of the Exclusive Economic Zone — that is before the Court in this case[2], what facts justify the statement quoted above that "Malta has a need for a lateral reach of control from its coastline which cannot be less than that of Libya"? The above-quoted statement of Malta is unsupported factually. There is no evidence put forward by Malta regarding the control implicitly exercised by Malta in areas over which this "apron of jurisdiction" is alleged to extend. It has no relevance to the continental shelf. It presupposes equidistance in every case. It ignores the relevant coasts of the Parties and the areas of shelf appertaining to such coasts[1].

---

[1] [Footnotes deleted.]

[2] It will be recalled that it was Malta's wish that the dispute be confined to the continental shelf. See fn. 1 at p. 62, above.

3.40 As for the suggestion that Malta's neutrality status reinforces the extent of its security interests, it would appear that this status should lessen its security and defence interests. However, this aspect of Malta's case leads to the next subsection.

2. Malta's Neutrality

3.41 A whole chapter has been devoted in the Maltese Memorial to Malta's neutrality, although the chapter consists of but three paragraphs appearing on one page[2]. Given this emphasis, it is reasonable to conclude that neutrality is a factor which Malta considers to be of major significance in the present case. Moreover it is listed in paragraph 272(m) as one of the "principal considerations justifying Malta's delimitation". As a non-aligned State, Libya admires and supports Malta's neutral policy. However, it cannot agree that it has any legal significance in connection with this delimitation. In addition, some of the factual statements made by Malta in its Memorial in this respect require correction, a task which Libya approaches with reluctance, and solely because it regards it to be its duty to inform the Court of the correct facts.

3.42 The central thesis of Malta's assertions regarding neutrality is that as a result of adopting this status it has placed itself in a disadvantageous economic position which, presumably, should be recognised by the Court in the present case and compensated for in its Judgment. In this sense, it is a point closely tied to those considerations covered in Section A of this Chapter relating to lack of natural resources and comparative economics. But beyond that, these assertions are not factually valid. Nor has neutrality ever been given recognition in law as a factor relevant to delimitation of the continental shelf. It is not necessary, either, to embellish the obvious point that this act of Malta[3] created no special rights for Malta in respect to the continental shelf. No such act gives rise to any international right or obligation to be compensated.

---

[1] Malta fails to mention certain facts that could bear on security considerations. For example, its major cities and ports are located on the northern coast of Malta facing Sicily. It is also to the north of Malta that the major shipping channels are found. The Maltese Memorial also overlooks the importance to Libya of security considerations, an importance underlined by Libya's extensive coastal length fronting on the Mediterranean along which its major cities and petroleum facilities are located.

[2] *Maltese Memorial*, p. 22; see also para. 232.

[3] To date, Italy, the Soviet Union and France have given formal recognition or support to Malta's neutral status.

3.43 Of particular relevance to Malta's neutral status, in the economic context in which it has been placed by Malta, is the neutrality agreement entered into with Italy in 1981 which guaranteed Malta $60 million over a five-year period at $12 million a year; concessionary financial credits of $15 million under the terms of Italian Law 38 of 1979; and credits of $4 million annually for joint Italo-Maltese projects under the provisions of the same law — a total of $95 million over the five-year period. Thus it is apparent that Malta's approach to neutrality has had its practical aspect. Malta quite evidently did not, at the time of the Italian agreement, view its neutrality as creating an economic disadvantage.

3.44 Neutrality has brought various positive benefits to Malta. Not only has the dockyard operated at a profit since the mid-1970s and undergone considerable development — although it has lost all military work—it is now capable of bidding successfully against internationally renowned shipyards. To take one example, in May 1983 the yard obtained an order to refit the Cunard Countess despite massive opposition from British shipbuilders. The contract was worth U.K. £2.2 million and had to be completed within 44 days — British yards could only offer a 60-day completion period.

3. Malta's Political Status

3.45 It is evident that in its Memorial Malta attaches considerable importance to the fact that it is not just an island but an island State. The heading of Chapter VI is: "Malta's Entitlement as an Island State". Although the ensuing discussion of that Chapter may seem to intermingle the entitlement of islands and islands States — and to deal at considerable length with the proposition that Malta's status as an island State should not deprive it of rights available to other coastal States — nevertheless it is clear from the Memorial as a whole that Malta accords special significance to its political status and regards it to be a relevant circumstance of the present case. If there be any doubts as to Malta's assertions of a special claim as an island State in the light of the rather confused treatment of the subject in Chapter VI, then paragraphs 220, 234(d), 266 and 272(i) and (p), *inter alia,* will dispel them. Libya, on the other hand, does not regard Malta's political status as relevant either to modify, alter, increase, or decrease any rights to areas of continental shelf it may have as a coastal State.

3.46 International law is indifferent to the political status of an island or group of islands in so far as continental shelf entitlement is concerned or as a relevant circumstance in the delimitation of areas of continental shelf. An island State does not constitute a particular legal category in international law giving rise to a specific legal régime. This can be illustrated in the jurisprudence and in the development of conventional law, matters which will be taken up in the next Chapter.

PART II

THE LAW

8

CHAPTER 4

CONTINENTAL SHELF ENTITLEMENT AND DELIMITATION

Introduction

4.01 To accept Malta's claim in the present case would be to accept the conclusion that an island — and in particular an island State — has, in principle, continental shelf rights up to the median line vis-à-vis any opposite mainland State, regardless of the physical factors such as the size, location or length of the coastline of either the island or the mainland State facing the area of shelf to be delimited. The legal arguments which Malta's Memorial advances in support of its claim are at variance with the basic legal elements of continental shelf delimitation as recognised by the Court[1]. The main misconceptions that appear in various places in the line of argument in the Maltese Memorial may be summarised as follows:

(i) The Maltese Memorial continually confuses entitlement to continental shelf rights and delimitation;

(ii) Malta's Memorial erroneously assumes that a limited number of controlling points on its coast — or even only one such point — generate continental shelf rights in the area which falls to be delimited between Malta and Libya, while, in reality, it is the coast from which the land territory of the States continues into and under the sea which is "the decisive factor for title to submarine areas adjacent to it[2]";

(iii) Malta misapplies to the specific geographical situation between Malta and Libya the dictum of the Court that between opposite coasts the median line will effect an equal (and hence equitable) division of the continental shelf area between the two coasts, inasmuch as the Court in its dictum evidently contemplated two coastlines of comparable length facing each other;

(iv) Malta ignores the fact that the overriding aim of continental shelf delimitations is to reach an equitable result in accordance with equitable principles that takes account of all the relevant factors and circumstances; and in so doing Malta disregards the physical factors of geography, geomorphology and geology relevant to the present case which limit Malta's continental shelf entitlement, as well as the relationship — in particular the comparative lengths — of the respective coasts of Malta and Libya which face the relevant area, factors which must be taken into account in order to achieve an equitable result; and

---

[1] As the next Chapter demonstrates, Malta's claim is also not supported by "State practice" as therein discussed (see Chapter 5, Section C, below).

[2] *Continental Shelf (Tunisia/Libyan Arab Jamahiriya), Judgment, I.C.J. Reports 1982*, p. 61, para. 73.

10

(v) Malta's Memorial asserts a privileged position for island States — and in particular developing island States — in continental shelf delimitation, although there is neither precedent nor legal basis for such a claim.

To some extent these assertions have been dealt with in Part I of this Counter-Memorial. To the extent that these assertions purport to have a basis in law, they will be dealt with below. However, it is appropriate first to deal with the manner in which Malta has injected the "principle of equality of States" into its argument in an effort to support its median line claim.

4.02 A subsection of Chapter VI of the Maltese Memorial is devoted to the principle of equality of States[1]. It is there asserted that this principle supports the "legal validity of the median line" in delimiting appurtenant shelf areas in the present case. This proposition is not, however, expressly repeated in paragraphs 234 and 272 of the Maltese Memorial which contain the Maltese conclusions.

4.03 It is necessary to draw the Court's attention to the categorical and yet ambiguous manner in which this contention of Malta is advanced without any attempt to support or clarify it. In this regard, paragraph 150 of the Maltese Memorial in its entirety is of particular interest:

> "The legal validity of the median line as the delimitation of appurtenant shelf areas in the present case is supported both by the equitable principles which constitute the law of shelf delimitation and also by the principle of the equality of States (as a general principle of international law). Given the simple coastal relationships of Malta and Libya, *an encroachment northward of the median line would involve an affront to the principle of the equality of States and, in particular, of coastal States*[2]."

4.04 It is incontestable that the equality of States is a fundamental principle of international law. But this principle has always been understood to mean that States benefit from their being equal under the law and that the principles and rules of international law are to be applied equally and without discrimination to all States, whether large or small, whether insular or continental. To quote a learned legal scholar, Edwin DeWitt Dickinson: "Equal protection of the law or equality before the law is essential to any legal system[1]." At the Second Hague Peace Conference, 1907, the first French delegate, Léon Bourgeois, stated that each nation had, "whether small or great, weak or powerful, an equal claim to respect for its rights, an equal obligation in the performance of its duties[2]".

---

[1] *Maltese Memorial*, paras. 150-153. It should be noted that this principle is contained in Article 2, para. 1, of the Charter of the United Nations and not in Article 2, para. 2, as the *Maltese Memorial* indicated.

[2] [Italics added.] No support or reason is offered by Malta why this must be so.

4.05 More recently, and perhaps in more explicit fashion, Professor Reuter in his lectures at the Academy of International Law in The Hague has stated the significance of this principle[3]. When the United Nations Charter refers in Article 2, paragraph 1, to the "sovereign equality" of States, it is referring to the common attribute of all States as sovereign entities — despite the obvious differences between countries — as the basis of equality. The application of the principle in the present case means that Malta — just as any other State — has rights to the continental shelf adjacent to its coast without prejudging either the respective areas belonging to each of the Parties or the methods of delimitation to be employed. It cannot be used as a justification for neglecting factors or conditions that are relevant to the application of the principles and rules of international law which govern continental shelf delimitations, or for compensating for geographical, economic, or other disadvantages.

4.06 However, it is difficult to ascertain whether the Maltese Memorial is referring to the principle of equality of States in its accepted sense or not. If it is, then it is clearly a *non sequitur* to argue that it supports a median line or any other particular solution in the present case. For, since all States are equal, all delimitations would have to be effected by the median or equidistance line. If, on the other hand, Malta is arguing that this principle means that Malta has a right to an area of continental shelf equal to that of Libya, then it has deformed the meaning of the principle of equality, and in so doing is presented with a paradox.

4.07 To say that because the two Parties as States are equal and, therefore, should have identical areas of shelf attributed to them is a conception that is clearly contrary to that firmly enunciated by the Court that a delimitation is not a sharing and that geography is not to be refashioned or natural inequalities compensated for through some form of distributive justice[1]. It is also totally at odds with the principle of natural prolongation enunciated by the Court. To misapply the principle of equality of States in such a way would lead logically to rather ridiculous results—States, by virtue of the equality principle, would have to have territories of the same size, equal populations, comparable economic strength, etc.

---

[1] DICKINSON, E.D., *The Equality of States in International Law*, Harvard, Oxford University Press, 1920, p. 4. A copy of this page is attached in *Documentary Annex 22*.

[2] Quoted by DICKINSON, op. cit., p. 3, citing BOURGEOIS, La Deuxième Conférence de la Paix, La Haye, 1907, II, 88. A copy of this page is also attached in *Documentary Annex 22*.

[3] "L'égalité semble au premier abord plus solide encore que la souveraineté. Elle pose en effet que les règles générales de droit international public sont formulées d'une manière abstraite pour tous les Etats sans considération de leurs caractéristiques particulières." REUTER, P., *Principes de Droit International Public*, Recueil des Cours de l'Académie de Droit International de la Haye, 1961, II, Vol. 130, p. 510. A copy of this page is attached as *Documentary Annex 23*.

4.08 It seems evident that the Maltese invocation of this principle does not go to this extreme. In paragraph 117 of the Maltese Memorial it is pointed out that a median line would accord Libya a shelf area of approximately 400,000 square kilometres and Malta a shelf area of approximately 60,000 square kilometres. This is clearly not a division into two equal parts, as that paragraph acknowledges[2]. Yet in paragraph 150 of the Maltese Memorial it is said, in the portion quoted above, that "an encroachment northward of the median line would involve an affront to the principle of the equality of States". This statement goes totally unexplained, and to Libya it is incomprehensible. If the median line method were ordained by the principle of the equality of States, there would be no point in the Court analysing the relevant factors and circumstances of the case. The equitable result would have been already established and any other solution would be an "affront", an "encroachment".

4.09 It is now appropriate to turn to an examination of the other main misconceptions that appear in the Maltese Memorial[3]. The discussion will deal with the elements of entitlement and delimitation separately.

A. Entitlement

1. The Continental Shelf Entitlement of Islands

4.10 It does not appear to be necessary to go over the whole ground again in explaining that a State's entitlement to the continental shelf adjacent to its coast — though the necessary basis for a claim to the area to be delimited — in no way predetermines the reach of continental shelf rights vis-à-vis the continental shelf of another State which extends into the same maritime area. This has already been explained in the Libyan Memorial and need not be repeated here[4]. The elementary distinction between continental shelf entitlement, on the one hand, and continental shelf delimitation between conflicting claims to the same continental shelf, on the other hand, had already been recognised in the 1958 Convention. There, it will be recalled, the definition of the continental shelf and the criteria by which a State could claim legal title to the shelf were dealt with in Article 1 while the delimitation of continental shelf boundaries between either adjacent or opposite States was dealt with in Article 6.

---

[1] *North Sea Continental Shelf, Judgment, I.C.J. Reports 1969*, p. 22, para. 18 and p. 50, para. 91. As the Court said at pp. 49-50, para. 91 of this Judgment: "Equity does not necessarily imply equality. ... Equality is to be reckoned within the same plane, and it is not such natural inequalities as these that equity could remedy."

[2] Of course, as this Counter-Memorial makes abundantly clear, Libya accepts neither the area which Malta would so divide as the area relevant to the present case nor the basis for such a division.

[3] See para. 4.01, above.

[4] See *Libyan Memorial*, Chapter 6 generally.

4.11 In its Judgment in the 1969 *North Sea* cases, the Court clearly distinguished between the legal basis of continental shelf rights over the maritime areas before or adjacent to a coast — to be found in the physical fact of the extension of the land territory into and under the sea — and the criteria for delimitation between the continental shelves of two States — which is to be effected in accordance with equitable principles taking into account all the relevant circumstances[1]. The new 1982 Convention on the Law of the Sea makes the same distinction between continental shelf entitlement and continental shelf delimitation: Article 76 of the Convention provides that a coastal State may claim continental shelf rights throughout the natural prolongation of its land territory from its coast up to certain limits as defined in that Article. Article 83, on the other hand, deals with the issue how a continental shelf area — which may be claimed by two or more States — is to be delimited between them. Neither Article refers to the other and their criteria are quite different. Moreover, paragraph 10 of Article 76 contains the express proviso that the provisions of that Article "... are without prejudice to the question of delimitation of the continental shelf between States with opposite or adjacent coasts".

4.12 Continental shelf delimitation between two States presupposes that both may validly claim continental shelf rights under the rules of continental shelf entitlement. As the Court observed in the *Tunisia/Libya* case:

> "The need for delimitation of areas of continental shelf between the Parties can only arise within the submarine region in which claims by them to the exercise of sovereign rights are legally possible according to international law[2]."

This does not mean, however, that the seaward extent to which a State may validly claim continental shelf rights is in any way determinative of the question of the delimitation of the continental shelf between that State and neighbouring States. For the basic criteria which govern continental shelf delimitation are that equitable principles be applied and that all the relevant circumstances be taken into account in order to reach an equitable result. Malta's Memorial seems to recognise this distinction between continental shelf entitlement and continental shelf delimitation, but it fails to grasp the correct conceptual relationship between the two aspects of the matter and the distinct criteria relevant to them.

---

[1] *North Sea Continental Shelf, Judgment, I.C.J. Reports 1969*, p. 32, para. 43, and p. 54, para. 101 [*dispositif*].

[2] *Continental Shelf (Tunisia/Libyan Arab Jamahiriya), Judgment, I.C.J. Reports 1982*, p. 42, para. 34.

14

4.13 The Maltese Memorial deals at length with the question whether islands, and in particular island States, are entitled to claim continental shelf rights over submarine areas in front of their coasts. Malta refers to the 1958 Convention as well as to the 1982 Convention which both contain provisions by which continental shelf rights may be claimed around the coast of an island. Malta refrains, however, from dealing with the implications of these provisions. Although neither Convention is applicable between the Parties to the present dispute, Libya does not deny — as already indicated in the Libyan Memorial[1] — that islands, irrespective of whether they are dependencies or separate States, may, in principle, claim continental shelf rights over maritime areas in front of their coasts under the same conditions and limits as any other land territory. The fact that this is so, however, does not prejudge the question of delimitation with neighbouring States which, it has been shown, must take into account all the relevant factors including the length of the island's coasts vis-à-vis those of neighbouring coastal States.

4.14 Malta cites a list of agreements and national legislation to show that State practice recognises the entitlement of islands to a continental shelf in front of their coasts. However, this fails to focus on the real issue which is not whether Malta may, in principle, claim continental shelf rights around its coast to the extent of the natural prolongation of its land territory into and under the sea, but rather what principles and criteria determine the delimitation between the continental shelves of Malta and Libya in the light of the geographical, geomorphological and geological factors and the other relevant circumstances. State practice — as evidenced not only by the agreements already concluded but also by pending disputes not yet resolved — shows a considerable variation in the extent to which continental shelf rights have been attributed to the coasts of islands in the context of delimitation. A thorough examination of all cases which have been the object of delimitation reveals that the weight given to islands and their coasts for the purpose of delimitation varies — depending upon the particular factual setting — from non-recognition to partial recognition up to full recognition. These examples of delimitation agreements will be examined and analysed in more detail later in this Counter-Memorial[2]. For the present, it suffices to say that the entitlement of islands, as such, does not appear to have been at issue in those cases, but rather the weight to be given to the location, size, and length of coastlines of such islands and other physical factors. These were the factors, among others, that were regarded as relevant to reach a satisfactory result in the particular case of delimitation.

---

[1] See *Libyan Memorial*, paras. 6.79-6.86.

[2] See Chapter 5, Section C, below, and the *Annex* of delimitation agreements.

4.15 Thus, Malta's argument — that State practice (to the extent it has been cited in the Maltese Memorial) affirms the entitlement of islands to continental shelf rights over maritime areas around their coasts — does not assist in determining the equitable principles or relevant circumstances for the delimitation of the continental shelves between Malta and Libya. Instead, Malta's contentions obscure the real issue, namely, the weight to be accorded to a small island which lies in front of an extensive continental coast.

4.16 If it is said that island coasts, in the same way as continental coasts, may generate continental shelf rights, it does not follow therefrom that the natural prolongation of an island's land territory into and under the sea — which is the indispensable factual basis of any claim — must have the same dimension as the natural prolongation of a continental landmass having a much more extensive coastline. This is not at variance with the principle of equal application of the law but is, rather, a consequence of the reduced dimension of the land territory and coast of a small island which generates a correspondingly more limited natural prolongation. Where an island is located in the open sea, no question of delimitation is presented and thus the island may claim continental shelf rights under the rules of continental shelf entitlement. Where, however, as in the case of Malta, the island is situated in a maritime area enclosed by continental coasts, the normal principles and rules governing delimitation apply; and continental shelf entitlement is one factor among others to be considered, its proper weight to be determined in accordance with equitable principles.

2. The Coastal Basis of Continental Shelf Entitlement

4.17 In paragraph 144, the Maltese Memorial correctly cites the following passage taken from paragraph 73 of the Court's Judgment in the *Tunisia/Libya* case:

> "As has been explained in connection with the concept of natural prolongation, the coast of the territory of the State is the decisive factor for title to submarine areas adjacent to it. Adjacency of the sea-bed to the territory of the coastal State has been the paramount criterion for determining the legal status of the submerged areas, as

> distinct from their delimitation, without regard to the various elements which have become significant for the extension of these areas in the process of the legal evolution of the rules of international law[1]."

4.18 Contrary to this clear exposition of what constitutes the geographical basis of continental shelf rights, Malta tries to assert that for purposes of delimitation of the continental shelf vis-à-vis another State it is not the coast, but some "basepoints" on the coast, which "generate[2]" or "control an appropriate area[3]" of appurtenant continental shelf. From this, Malta draws the conclusion that the length of the coastline has no relevance to the extent of the continental shelf area appurtenant to that coast and, consequently, no relevance for the purpose of delimitation of this area vis-à-vis another State[4]. By substituting basepoints — whose sole utility is for the construction of boundary lines based on certain methods — for the coast as the basis of continental shelf entitlement, Malta obscures such important geographical facts as the small size of Malta and its coastline as compared with Libya's extensive coast facing the maritime area to be delimited between them. The purpose of this line of argument is apparent from the following assertion in the Maltese Memorial: "Malta has a need for a lateral reach of control from its coastline which cannot be less than that of Libya[5]." Thus, Malta merely asserts equidistance without advancing an argument for its equitableness in the light of the particular geographical relationship between the respective coasts of the Parties.

4.19 Malta's claim that a small island — as Malta is — or even a single basepoint on its coast would, as of right, generate a continental shelf of the same reach and extent as a continental coast of considerable length is neither in harmony with continental shelf doctrine nor supported by the jurisprudence of the Court. The continental shelf concept, though a legal concept and subject to legal interpretation according to its object and purpose, cannot be divorced from its factual basis. It is the landmass behind the coastline which — by its continuation into and under the sea — provides the factual basis and legal justification for a State's entitlement to continental shelf rights over maritime areas before its coast — and not mere distance or proximity from certain basepoints on the coast[6].

---

[1] *Continental Shelf (Tunisia/Libyan Arab Jamahiriya), Judgment, I.C.J. Reports 1982*, p. 61, para. 73.

[2] *Maltese Memorial*, para. 120. See also the discussion of Malta's assertions regarding "basepoints" at Chapter 2, Section B.3, above.

[3] *Ibid.*, para. 266

[4] *Ibid.*, paras. 128-129 and 246.

[5] *Ibid.*, para. 232.

[6] *North Sea Continental Shelf, Judgment, I.C.J. Reports 1969*, p. 31, para. 43.

4.20 This Court has made the factual basis of continental shelf entitlement quite clear in its Judgment in the *North Sea* cases where it said at paragraph 43:

> "What confers the *ipso jure* title which international law attributes to the coastal State in respect of its continental shelf, is the fact that the submarine areas concerned may be deemed to be actually part of the territory over which the coastal State already has dominion, — in the sense that, although covered with water, they are a prolongation or continuation of that territory, an extension of it under the sea. From this it would follow that whenever a given submarine area does not constitute a natural — or the most natural — extension of the land territory of a coastal State, even though that area may be closer to it than it is to the territory of any other State, it cannot be regarded as appertaining to that State; — or at least it cannot be so regarded in the face of a competing claim by a State of whose land territory the submarine area concerned is to be regarded as a natural extension, even if it is less close to it[1]."

4.21 The Court enunciated this fundamental principle of continental shelf delimitation in a dispute where there were competing claims between adjacent States, but it remains by the force of its reasoning no less true in situations where there are competing claims by States whose coasts are opposite to each other. Indeed, the Court has indicated that the application of this principle is not limited to geographical situations of the first kind. This has been made quite clear by the Court in the *Tunisia/Libya* case:

> "The coast of each of the Parties, therefore, constitutes the starting line from which one has to set out in order to ascertain how far the submarine areas appertaining to each of them extend in a seaward direction, as well as in relation to neighbouring States situated either in an adjacent or opposite position[2]."

Thus, in each geographical situation where there are competing claims of States for continental shelf areas, it has always first to be ascertained what areas can be regarded as the natural prolongation of the respective land territories of each of the States involved. In a case where a small island lies opposite a long coast, the natural prolongation of the land territory of the island will, by the natural fact of its small size, be more limited than the natural prolongation of the opposing coast.

4.22 In its Memorial, Libya has already provided ample evidence that in the shelf area between Malta and Libya there is a marked — and even in a global perspective rather rare—discontinuity which terminates Malta's natural prolongation at what has been termed the "Rift Zone[1]". This limit of Malta's natural prolongation is in harmony with the geographical fact of Malta's smallness in relation to the long opposite coast of Libya. So small a coast could not generate as extensive a natural prolongation as such a long coast. Similarly, Malta's natural prolongation eastward is arrested by a series of escarpments and faults which are major sea-bed features. This limit of Malta's natural prolongation eastward is again in harmony with its tiny east-facing coast. The extreme suggestion in the Maltese Memorial that Malta's natural prolongation extends all the way ⑫ to the eastern coast of Libya (Ras at-Tin), as portrayed on Figure A at page 118, and overlaps with Libya's natural prolongation from its extensive coast offends totally those equitable principles, quite aside from overlooking the important sea-bed features that arrest Malta's natural prolongation. The proposition that seems to flow from this extreme assertion — that any claim of Libya north of a median line would "encroach" on Malta's natural prolongation constructed in this artificial and inequitable fashion — is pure invention and has no basis in fact or in law[2].

---

[1] *North Sea Continental Shelf, Judgment, I.C.J. Reports 1969*, p. 31, para. 43.

[2] *Continental Shelf (Tunisia/Libyan Arab Jamahiriya), Judgment, I.C.J. Reports 1982*, p. 61, para. 74.

4.23 Apart from the physical factors which already limit Malta's natural prolongation, the result would not be substantially different if, as Malta contends, the discontinuity in the shelf were absent. Even if there were no physical factors which permitted a sufficiently precise determination of the reach of the natural prolongation of an island, it does not mean that an island of small dimensions must, under equitable principles, have attributed to it a natural prolongation of the same dimension as the natural prolongation of the continental coast which it faces. Reference may be made in this respect to paragraph 194 of the Court of Arbitration in the *Anglo-French Arbitration* where it was stated:

> "The true position, in the opinion of the Court, is that the principle of natural prolongation of territory is neither to be set aside nor treated as absolute in a case where islands belonging to one State are situated on continental shelf which would otherwise constitute a natural prolongation of the territory of another State. The application of that principle in such a case, as in other cases concerning the delimitation of the continental shelf, has to be appreciated in the light of all the relevant geographical and other circumstances. When the question is whether areas of continental shelf, which geologically may be considered a natural prolongation of the territories of two States, appertain to one State rather than to the other, the legal rules constituting the juridical concept of the continental shelf take over and determine the question. Consequently, in these

---

[1] *Libyan Memorial*, paras. 3.12-3.24; see also paras. 2.70-2.76, above.

[2] See *Maltese Memorial*, paras. 240-243.

cases the effect to be given to the principle of natural prolongation of the coastal State's land territory is always dependent not only on the particular geographical and other circumstances but also on any relevant considerations of law and equity[1]."

4.24 Libya does not contend that the case of the Channel Islands and Malta are comparable in all respects. Nevertheless, the above dictum contains two important considerations that apply in the present dispute:

(i) In cases where the natural prolongations of an island and a continental coast — in front of which the island is located — overlap, the continental shelf to be attributed to the island will have to be determined in accordance with equitable principles, in particular by taking into account the geographical situation in each particular case[2];

(ii) Islands in such a geographical situation will be attributed a much smaller area of continental shelf than the continental coast, the extent of the area depending on the equities of the case.

B. Delimitation

1. The Relative Weight of Coasts of Different Lengths For Purposes of Delimitation

4.25 The delimitation of maritime boundaries between small islands and long continental coasts poses the special problem of determining an equitable boundary between coastlines of extreme differences in length. It must be emphasised, however, that this problem is not peculiar to islands alone and may also arise between mainland coasts. In view of the sizeable number of small islands with small coastlines facing continental coasts, however, this problem arises much more frequently in connection with the delimitation of island maritime boundaries. On the other hand, where larger islands are involved in a maritime boundary delimitation, their coastlines may well broadly correspond in length to the opposite continental coasts so that the problem of delimitation between unequal coasts does not arise[3]. In the present case, Malta is a small island whose coasts face a continental coast relevant to the delimitation which, in the case of Libya, is more than eight times longer than the related coast of Malta. Thus, the delimitation of a maritime boundary between unequal coasts poses itself with special gravity. As the delimitation of the continental shelf is intimately connected with and dependent on geographic realities, this fact must be addressed.

---

[1] *Anglo-French Arbitration, Decision of 30 June 1977* (Cmnd. 7438), p. 93, para. 194.

[2] The concept of the "most natural" prolongation referred to in the 1969 Judgment is pertinent in this context (*North Sea Continental Shelf, Judgment, I.C.J. Reports 1969*, p. 31, para. 43). The relevant language is quoted at para. 4.20, above.

[3] The *Anglo-French Arbitration* provides a pertinent example. Throughout the English Channel the coasts of the United Kingdom and France were seen to be roughly comparable in length despite the fact that the relevant portion of the United Kingdom was an island. See *Map 7* facing p. 90, below.

4.26 In its Memorial, Malta tries to dispose of this consideration by asserting that between opposite coasts, whatever their dimension and length, the median line necessarily represents the equitable boundary. For this bold assertion Malta purports to find support in paragraph 57 of the Judgment in the *North Sea* cases (also referred to in paragraph 126 of the Court's Judgment in the *Tunisia/Libya* case) where the Court, in distinguishing delimitation between adjacent and opposite coasts, said the following:

> "The continental shelf area off, and dividing, opposite States, can be claimed by each of them to be a natural prolongation of its territory. These prolongations meet and overlap, and can therefore only be delimited by means of a median line; and, ignoring the presence of islets, rocks and minor coastal projections, the disproportionally distorting effect of which can be eliminated by other means, such a line must effect an equal division of the particular area involved[1]."

This dictum of the Court, while certainly true in cases of continental shelf delimitation between relatively simple coastlines of comparable length, cannot apply to the delimitation between Malta and Libya. When the Court stressed the prevalence of the median line in a continental shelf delimitation between opposite coasts, the Court had in mind coasts of comparable length, not a delimitation between a small island and an extensive continental coast. The question of islands did not arise in the *North Sea* cases. This follows quite evidently from the language of the Court. The Court did not say that between opposite coasts the median line is always equitable, but rather that it "effects an equal division" of the area involved — which will only in fact result in those cases where coasts of comparable length oppose each other, and will never result where a median or equidistance line is drawn between a small island and a much longer continental coast. Therefore, it must be assumed that the Court had only opposite coasts of comparable length in mind.

4.27 The only case so far where a delimitation between clearly opposite coasts was decided by an international court is the *Anglo-French Arbitration*. In that case, the Court of Arbitration determined that the median line between the opposite coasts of the British and French mainlands constituted an equitable boundary. The Court did not, however, apply the median line method with respect to the Channel Islands. *Map 7*, facing page 90, which depicts the resulting boundary, illustrates these points.

---

[1] *North Sea Continental Shelf, Judgment, I.C.J. Reports 1969*, p. 36, para. 57.

When referring to this Decision, the Maltese Memorial omits any reference to the repeated remarks in the Judgment that the equitableness of the median line between opposite coasts presupposes that both coasts are approximately of equal length[1]. Particular reference may be made in this respect to the following passage from the Decision in the *Anglo-French Arbitration*:

> "Between opposite States, as this Court has stated in paragraph 95, a median line boundary will in normal circumstances leave broadly equal areas of continental shelf to each State and constitute a delimitation in accordance with equitable principles. It follows that where the coastlines of two opposite States are themselves approximately equal in their relation to the continental shelf not only should the boundary in normal circumstances be the median line but the areas of shelf left to each Party on either side of the median line should be broadly equal or at least broadly comparable[2]."

Later in the Decision, when the Court of Arbitration refused to give the Channel Islands the same weight as the British mainland coast and thus distinguished their case from the delimitation between the British and French mainlands, the Court of Arbitration made the following remark:

> "In paragraph 181, the Court has already drawn attention to the approximate equality of the mainland coastlines of the Parties on either side of the English Channel, and to the resulting equality of their geographical relation to the continental shelf of the Channel, if the Channel Islands themselves are left out of account. The presence of these British islands close to the French coast, if they are given full effect in delimiting the continental shelf, will manifestly result in a substantial diminution of the area of continental shelf which would otherwise accrue to the French Republic. This fact by itself appears to the Court to be, *prima facie*, a circumstance creative of inequity and calling for a method of delimitation that in some measure redresses the inequity[3]."

4.28 Thus, it seems clear that the Court of Arbitration regarded the argument of the equitableness of the median line between opposite coasts as being valid only in those cases where the opposite coasts are broadly equal or comparable in length. It should be noted, in this context, that the Court in the *Tunisia/Libya* case made a carefully balanced remark about the appropriateness of the median line in situations of adjacency and oppositeness which shows how well aware the Court was of the relativity of any argument based on the oppositeness of two coasts:

---

[1] See, for example, *Maltese Memorial*, para. 182.

[2] *Anglo-French Arbitration, Decision of 30 June 1977* (Cmnd. 7438), p. 89, para. 182.

[3] *Ibid.*, pp. 93-94, para. 196.

> "The Court in its 1969 Judgment recognized that there was much *less difficulty* entailed in a general application of the equidistance method in the case of coasts opposite to one another, when the equidistance line becomes a median line, than in the case of adjacent States (*I.C.J. Reports 1969*, pp. 36-37, para. 57). The major change in direction undergone by the coast of Tunisia seems to the Court to go some way, though not the whole way, towards transforming the relationship of Libya and Tunisia from that of adjacent States to that of opposite States, and thus to produce a situation in which the position of an equidistance line becomes a *factor to be given more weight in the balancing of equitable considerations* than would otherwise be the case[1]."

Thus, the Court was far from giving the median line between opposite coasts that absolute character which Malta would like to assert.

4.29 Since there is no rule that in cases of continental shelf delimitation between an island and a continental coast the median line will necessarily produce an equitable boundary, the question remains as to what other equitable principles should govern the delimitation in such cases, apart from the physical factors which have already been dealt with above.

4.30 A principle that has found recognition in the jurisprudence of this Court as well as in the *Anglo-French Arbitration*, and which appears to have gained support in a number of bilateral delimitation agreements, is the consideration that the "weight" to be attributed to small islands in terms of continental shelf rights varies according to their size, location and other factors, and may considerably reduce the continental shelf area attributed to such islands on the basis of an evaluation of these factors in the particular geographical situation. In the *Annex* of delimitation agreements to this Counter-Memorial a careful analysis has been made of all existing delimitation agreements of which Libya is aware. These include many situations where islands were involved one way or another. As Section C of Chapter 5 below and this *Annex* make clear, any general conclusions drawn from this "State practice" are necessarily conditioned by the particular circumstances of each case. This analysis suggests, however, that the size of the island as well as the comparability of the opposing coastlines has exercised an important influence on the "weight" attributed to such an island and the continental shelf area accorded to that part of its coast that faces the area which has been delimited.

---

[1] *Continental Shelf (Tunisia/Libyan Arab Jamahiriya), Judgment, I.C.J. Reports 1982*, p. 88, para. 126. [Italics added.]

4.31 Thus, a comparison of the length of the relevant coastlines that face the area to be delimited between the island and the continental coast is fundamental to the overriding aim of achieving an equitable result in accordance with equitable principles. If the amount of continental shelf area that would attach to an island's coastline by virtue of the equidistance or any other boundary line is out of proportion to the ratio of the respective coastlines of the island and the continental coast relevant to the delimitation, this is a clear indication that such a boundary is inequitable. This does not mean that proportionality is used in such a case as a method for determining the boundary line; it serves only as a test of the appropriateness of a particular boundary in the same manner as this test was used by the Court of Arbitration in the *Anglo-French Arbitration* where the Court said:

> "Proportionality, therefore is to be used as a criterion or factor relevant in evaluating the equities of certain geographical situations, not as a general principle providing an independent source of rights to areas of continental shelf[1]."

4.32 The inequitableness of Malta's claim to an equidistance boundary — under which an amount of area of continental shelf would be attributed to Malta far out of proportion to the ratio of the respective lengths of the relevant coastlines of both Parties — is thus apparent. It is understandable that Malta does not like the proportionality test and contests the application of such a test to the delimitation between Malta and Libya. But, as will be seen in Chapter 6 below, there is no support for the Maltese position in the jurisprudence of this Court which has qualified proportionality as an element of continental shelf delimitation which "is indeed required by the fundamental principle of ensuring an equitable delimitation between the States concerned[2]".

4.33 Whatever may be the function of proportionality in continental shelf delimitation, the comparative length of the coastlines of the Parties which face the area to be delimited between them still remains of primary relevance for the evaluation of the "weight" of Malta's coast in relation to Libya's coast in delimiting the continental shelf between them. If it may be considered that the median line between opposite coasts is equitable because in a case of coasts of equal or at least comparable length the median line effects a partition of the continental shelf in equal parts (absent other factors), it follows *per argumentum a contrario* that a marked difference between the coasts which face each other must find expression in a boundary which adequately reflects this difference. Thus, it seems to be an equitable principle based on undeniable geographical facts in a geographical situation of this kind that — apart from nice calculations of proportionality — the ratio between the length of the two relevant coastlines that embrace the maritime area to be delimited is a suitable method for calculating the relative "weight" of the island's coast in generating the natural prolongation of its territory vis-à-vis a continental coast with much more extensive dimensions.

---

[1] *Anglo-French Arbitration, Decision of 30 June 1977* (Cmnd. 7438), p. 61, para. 101.

[2] *Continental Shelf (Tunisia/Libyan Arab Jamahiriya), Judgment, I.C.J. Reports 1982*, p. 75, para. 103.

2. The Alleged Privileged Status of Island States

4.34 The inescapable conclusion that is derived from the Maltese Memorial is that Malta claims that, as an island State, its continental shelf should extend as far as the continental shelf of any other coastal State, irrespective of its small size and its restricted coastline, and that any considerations that might affect the case of dependent islands do not apply to an island State[1]. This allegation does not find support in the jurisprudence referred to by Malta, nor does it accord with the treatment of this issue in the United Nations Sea-Bed Committee and at the Third Conference on the Law of the Sea.

4.35 Turning first to the *Anglo-French Arbitration* to which Malta refers[2], it is true, as the Maltese Memorial indicates, that the Court of Arbitration considered at some length the political characteristics of the Channel Islands and the degree to which they were dependent on the authority of the United Kingdom. But this detailed analysis was aimed essentially at deciding to what extent these islands could ultimately derive individual title "to their own continental shelf *vis-à-vis* the French Republic[3]". Moreover, as mentioned earlier in connection with economic considerations, the parties to that case presented voluminous evidence on political and economic factors and the Court of Arbitration had no choice but to deal with these arguments. The fact that they did so is not recognition of economic and political considerations as relevant circumstances in delimiting the continental shelf. The ultimate solution in the case of the Channel Islands hardly bears out the significance which Malta sees in the political factor in that case. The Court of Arbitration disposed of the argument raised by the United Kingdom that the Channel Islands should be treated like separate semi-independent States by denying such a separate status and treating them only as islands of the United Kingdom[3]. To infer therefrom, as Malta does, that the Court would have attributed to the Channel Islands additional areas of continental shelf had they been an independent State'[1], is mere conjecture and has not been indicated in any way in the language of the Decision. It is certainly conceivable that the overall geographical relationship between two States might influence the treatment of their respective islands in delimitation agreements aimed at reaching an equitable result; and that such considerations might not apply in a case where — in consequence of the fact that the island involved is an independent island State — the delimitation would necessarily be restricted to the relationship of that island alone to the opposite continental coast. However, this does not imply a privileged position for such an island because of its independent political status but, rather, results from the effect of the overall geographical relationship between the respective States.

---

[1] This subject is dealt with briefly in Chapter 3 above (paras. 3.45-3.46) in the context of considerations advanced by Malta that Libya regards as irrelevant to the present case. The emphasis given to island State status in the *Maltese Memorial* is seen from the fact that a full chapter (Chapter VI) consisting of paras. 135-178, pp. 43-58, is devoted to the subject, not to speak of the numerous other references contained elsewhere in that pleading.

[2] *Maltese Memorial*, para. 138.

[3] *Anglo-French Arbitration, Decision of 30 June 1977* (Cmnd. 7438), p. 90, para. 186.

4.36 Malta purports to draw further support for the alleged privileged position of island States in continental shelf delimitation from the Declaration of the Organisation of African Unity on the Issues of the Law of the Sea, adopted at the session of its Council from 17-24 May 1973 in Addis Ababa and reaffirmed at the Council's session in Mogadisciu from 6-11 June 1974[2]. This Declaration contained a paragraph on the régime of islands and a reference to the special interests of island States. However a careful analysis of the wording as well as of the purpose of this paragraph of the Declaration reveals that the position of the African States on the island question had at that time focussed not on the delimitation of an island's maritime spaces vis-à-vis neighbouring States but rather on the still controversial issue of the entitlement of islands to a continental shelf or an economic zone.

4.37 In this respect, the Declaration did not even support the full entitlement to continental shelf rights of island States and, much less, Malta's claim to a privileged position as an island State. The Declaration stated the position of the African States with respect to the régime of islands as follows:

> "That the African States recognize the need for a proper determination of the nature of maritime spaces of islands and recommend that such determination should be made according to equitable principles taking account of all relevant factors and special circumstances including:

---

[1] *Maltese Memorial*, para. 138.

[2] This is erroneously dated in para. 206 of the *Maltese Memorial* as 19 July 1974. It is noted that this Declaration was mentioned in paras. 206 and 207 of the *Maltese Memorial*, in the section dealing with the conduct of the Parties. Aside from the fact that the Declaration hardly supports Malta's contentions, as shown below, it also is apparent that positions taken and votes cast by either of the Parties at international conferences and as members of international organisations, selected at random in this way, can hardly be regarded as having legal relevance in terms of the conduct of the Parties.

(a) The size of islands
(b) Their population or the absence thereof
(c) Their contiguity to the principal territory
(d) Their geological configuration
(e) The special interest of island States and archipelagic States."

4.38 This position must be viewed in the light of the — at that time still unresolved—controversy in the United Nations Sea-Bed Committee whether and to what extent islands should be accorded extended maritime spaces of their own beyond the limit of their territorial waters. That is why the above-cited Declaration did not speak of the extent but of the "nature" of maritime spaces of islands, thus making it clear that only the question of entitlement to extended maritime spaces was addressed here, not the question of delimitation between islands and continental States[1].

4.39 The approach of the African States relating to the maritime spaces of islands as expressed in this Declaration was mainly directed against small islands generating enormous spaces of continental shelf or economic zone around them, and reducing thereby the international areas of the oceans. In this context, it is particularly significant that the size of the island has been considered as the primary factor for an equitable entitlement of islands to continental shelf rights. It seems that, under the criteria put forward in the Declaration, Malta would have had a very weak claim to continental shelf entitlement unless, as an island State, it could have shown special interests that might mitigate this diminution of entitlement. Certainly no support for a privileged position of island States in delimitation cases can be drawn from the Declaration.

4.40 It may be useful in this context to review the further development of the island question in the discussions of the United Nations Sea-Bed Committee and at the Third United Nations Conference on the Law of the Sea. The approach of the African States to reduce the entitlement of islands to extensive maritime spaces remained basically the same during these discussions. They took, however, a more moderate position with respect to the entitlement of island States, holding that island States should remain exempt from a reduction or denial of entitlement on account of the above-mentioned criteria; but as to delimitation of the maritime spaces of island States vis-à-vis mainland States they held that they should remain subject to those criteria. Reference may be made in this respect to the draft articles proposed by 14 African States in the Sea-Bed Committee[1].

---

[1] This purpose of the Declaration of the Organisation of African Unity has been explained by the Tunisian delegate in the 40th Meeting of the United Nations Conference on the Law of the Sea, where he deplored the fact that the 1958 Convention had granted islands the same rights as continental landmasses and stated that this situation—

> "...was also unfavourable to all land-locked and other geographically disadvantaged States, which, having expected an equitable distribution of the resources of the international zone, were justly concerned at seeing that concept rendered meaningless by the exaggerated claims of countries possessing islands, particularly when the concept of the 200-mile economic zone and that of archipelagic States promised to become a reality.
>
> "The Declaration of the Organisation of African Unity (A/CONF.62/33) was an attempt to resolve that conflict of interests and establish objective and equitable rules...".

40th Meeting (14 August 1974), Third United Nations Conference on the Law of the Sea, *Official Records*, Vol. II, p. 287. A copy of this page is attached as ***Documentary Annex 24***.

4.41 At the Law of the Sea Conference, the entitlement of islands to continental shelf or economic zone rights was by no means undisputed. Several drafts were there put forward which proposed to take account of such factors as the size of islands, their population and their geographic position in attributing maritime areas to them—some of them even without making special provision for island States. Reference may be made in this respect to the Draft Paragraph on the Régime of Islands proposed by Algeria, Cameroon, Iraq, Ireland, Libya, Madagascar, Nicaragua, Romania and Turkey which read as follows:

> "Islands which are situated on the continental shelf or exclusive economic zone of another State, or which on the basis of their geographical location affect the normal continental shelf or exclusive economic zone of other States shall have no economic zone or continental shelf of their own[2]."

Proposals of this kind met with the vigorous opposition of those many States which wanted to claim continental shelf and economic zone areas around their islands, and of course of the small island States which objected to any diminution of their general entitlement to such maritime zones. For example, reference may be made in this respect to the complaint made by New Zealand (speaking for the Cook Islands) that the situation of small island countries, and particularly of those in the Pacific, had not yet been fully appreciated by the Conference[1]; and the representative of Malta expressed the wish that a distinction be made between islands and island States in the following terms:

---

[1] U.N. Doc. A/AC.138/SC.II/L.40 and Corr. 1-3—*General Assembly Official Records: 28th Session, Supplement No. 21 (A/9021)*, Vol. III, p. 89. Art. XII on the régime of islands reads as follows:

> "1. Maritime spaces of islands shall be determined according to equitable principles taking into account all relevant factors and circumstances, including *inter alia*:
>
> a) The size of islands;
> b) The population or the absence thereof;
> c) Their contiguity to the principal territory;
> d) Whether or not they are situated on the continental shelf of another territory;
> e) Their geological and geomorphological structure and configuration.
>
> 2. Island States and the régime of archipelagic States as set out under the present Convention shall not be affected by this article."

A copy of this page is attched in *Documentary Annex 25*. See also U.N. Doc. A/CONF.62/C.2/L.62/ Rev. 1 (27 Aug. 1974), Third United Nations Conference on the Law of the Sea; *Official Records*, Vol. III, pp. 232-233. A copy of this page is attached as *Documentary Annex 26*.

[2] U.N. Doc. A/ CONF. 62/C.2/L.96 (11 July 1977), Third United Nations Conference on the Law of the Sea: *Official Records*, Vol. VII, p. 84. A copy of this page is attached as *Documentary Annex 27*.

> "With regard to the régime of islands, he said that his delegation recognized the difficulty of defining maritime spaces because of the presence of islands, but it could not support the suggestions which had been made on the subject of islands unless a clear distinction was drawn between island States and other islands[2]."

4.42 In view of the strong opposition against any curtailment of the general entitlement of islands to continental shelf or economic zone rights along the lines of the above-mentioned proposal of the African States and others like it, the Third Conference on the Law of the Sea adopted the formula which is now contained in Article 121, paragraphs 2 and 3 of the Convention on the Law of the Sea, reading as follows:

> "2. Except as provided for in paragraph 3, the territorial sea, the contiguous zone, the exclusive economic zone and the continental shelf of an island are determined in accordance with the provisions of this Convention applicable to other land territory.
>
> 3. Rocks which cannot sustain human habitation or economic life of their own shall have no exclusive economic zone or continental shelf."

With the exception of rocks which cannot sustain human habitation or which have no economic life of their own, the Convention makes no distinction between continental or insular territories, or between dependent or independent islands with respect to their entitlement to continental shelf or economic zone rights off their coasts; the Convention does not recognise any privileged position for island States as compared with other islands. The equating of islands to "land territory" in the 1982 Convention — which followed in this respect the precedent set by Article 1(b) of the 1958 Continental Shelf Convention relating to the continental shelf entitlement of islands — leaves no doubt that, with respect to the generation of continental shelf or economic zone rights, the political status of the island is irrelevant, and that it is the territory which generates the continental shelf or economic zone rights off its coast. In view of this outcome of the negotiations at the Conference, a special provision for island States, securing for them the general entitlement to maritime spaces, had no object any more.

---

[1] 46th Meeting (29 July 1974), Third United Nations Conference on the Law of the Sea, *Official Records*, Vol. I, p. 200. A copy of this page is attached as *Documentary Annex 28*.

[2] 105th Meeting (19 May 1978), *idem, Official Records*, Vol. IX, p. 79. A copy of this page is attached as *Documentary Annex 29*.

4.43 Here again, however, entitlement must be distinguished from delimitation. It must be emphasised that Article 121 (Régime of Islands) deals exclusively with entitlement to maritime spaces vis-à-vis other States. The continental shelf or economic zone delimitation between the coasts of States, whether insular or continental, is exclusively regulated under Articles 74 and 83 of the 1982 Convention; no inference can be drawn from Article 121 with respect to the criteria for such delimitation. This interpretation corresponds to the history of Article 121. Its paragraph 2 — which had already appeared in the first informal negotiating text after the Geneva Session in 1975 and remained unchanged until the final adoption of the Convention — had been taken in its substance from the draft articles on islands proposed by New Zealand and three other Pacific island States[1]. This proposal had been accompanied by an explanatory note that this proposal was "intended to be without prejudice to the question of the delimitation of island ocean space as between adjacent or opposite States, or in other special circumstances".

4.44 Malta's Memorial (paragraph 169) cites with approval the remark made by Judge Oda in paragraph 150 of his Dissenting Opinion to the Judgment of the Court in the *Tunisia/Libya* case in respect to Article 121 of the 1982 Convention:

> "No suggestion was ever made, no idea ever presented, to imply that an island State should be distinguished from other coastal States or from any non-independent island or groups of islands."

This was certainly a correct assessment of the outcome of the negotiations at the Third United Nations Conference on the Law of the Sea as far as it has found expression in Article 121 of the Convention. Malta's Memorial fails, however, to acknowledge that the equating of insular and continental territory contained in Article 121, paragraph 2, of the Convention, while recognising the general entitlement of island territories to continental shelf rights, at the same time subjects islands — whether dependent or independent — to the same principles and rules of delimitation that apply between the coasts of any land territory. No inference can be drawn from Article 121 that undeniable geographical facts such as the small size of an island and the limited extent of its coastline — which have been considered relevant in delimitations where islands are involved — could simply be ignored because the island happens to be an independent State. Article 121 is based on the premise that it is the territory, and not statehood, that is the factual and legal basis for rights over maritime spaces in front of a coast.

---

[1] U.N. Doc. A/CONF.62/C.II/L.30 (30 July 1974), Third United Nations Conference on the Law of the Sea, *Official Records*, Vol. III, pp. 210-211. A copy of these pages is attached as *Documentary Annex 30*. Paras. 3 and 4 of this proposal read as follows:

> "3. The economic zone of an island and its continental shelf are determined in accordance with the provisions of this Convention applicable to other land territory.
> 4. The foregoing provisions have application to all islands, including those comprised in an island State."

4.45 Thus, irrespective of whether the general entitlement of islands to continental shelf or economic zone rights may — despite its controversial character — now be regarded as existing international law, Malta's claim that island States have a privileged position in continental shelf delimitation can certainly not find any support in the latest developments in the Law of the Sea.

3. The So-Called "Distance Principle"

4.46 The Maltese Memorial advanced what is termed the "distance principle" as a further argument which in Malta's view "confirms the legality of the median line" for the delimitation of the continental shelf areas of Libya and Malta[1]. It is not easy to follow the line of argument which purports to lead to such a bold conclusion because, here again, Malta's argumentation confuses entitlement and delimitation. The Maltese Memorial even goes so far as to suggest—in another hypothetical example of which Malta seems particularly fond (see paragraph 2.20, above)—that if the Maltese Islands were situated in the Atlantic Ocean less than 400 miles offshore Portugal, a delimitation would "of necessity" have to be by means of equidistance. No explanation is offered, however, why this must be so. Indeed, the acceptance of such a proposition would mean that delimitations would always have to be established according to an equidistance line, clearly an unacceptable interpretation of the law. At any rate, the criterion of distance is neither applicable to the continental shelf delimitation between Libya and Malta, nor does it provide a legal justification for drawing a median line in such a delimitation[2].

4.47 The Court has alluded to the factor of distance in paragraphs 47 and 48 of its Judgment in the *Tunisia/Libya* case in referring to Article 76, paragraph 1, of the 1982 Convention as possibly reflecting new trends in the Law of the Sea[3]. The Court made it quite clear that it understood such a factor in the sense that adjacency within 200 miles from the coast could, under Article 76 of the Convention, in certain circumstances provide a subsidiary title to continental shelf rights over submarine areas within the 200-mile limit. The Court said:

---

[1] See, generally, *Maltese Memorial*, paras. 248-255.

[2] See, generally, *Libyan Memorial*, paras. 6.06 and 6.22.

[3] As pointed out in para. 6.22 of the *Libyan Memorial*, the 1982 Convention is not in force either generally or between the Parties to the present case.

> "According to the first part of paragraph 1 the natural prolongation of the land territory is the main criterion. In the second part of the paragraph the distance of 200 nautical miles is in certain circumstances the basis of the title of a coastal State[1]."

> "In so far however as the paragraph provides that in certain circumstances the distance from the baseline, measured on the surface of the sea, is the basis for the title of the coastal State, it departs from the principle that natural prolongation is the sole basis of the title[2]."

4.48 Thus, the Court has unmistakably affirmed that the natural prolongation of the land territory into and under the sea remains the primary basis for the entitlement to continental shelf rights, and that under Article 76 of the 1982 Convention on the Law of the Sea there will be a subsidiary basis for entitlement to continental shelf rights over those submarine areas within the 200-mile limit which are not covered by the natural prolongation of the land territory (*i.e.*, by the continental margin as defined in Article 76, paragraph 3 of the 1982 Convention[3]). The subsidiary character of entitlement derived from the criterion of distance has been clearly expressed in the wording of Article 76, paragraph 1, which states that the continental shelf jurisdiction of the coastal State comprises "the sea-bed and subsoil of the submarine areas ... throughout the natural prolongation of its land territory to the outer edge of the continental margin" or to a distance of 200 nautical miles from the coast "where the outer edge of the continental margin does not extend up to that distance". This wording can only be interpreted in the sense that adjacency within the 200-mile limit may be relied on as a subsidiary basis for continental shelf entitlement in respect of those submarine areas "where" the continental margin does not reach the 200-mile limit. Article 76, paragraph 1, quoted in full, reads as follows:

> "The continental shelf of a coastal State comprises the sea-bed and subsoil of the submarine areas that extend beyond its territorial sea throughout the natural prolongation of its land territory to the outer edge of the continental margin, or to a distance of 200 nautical miles from the baselines from which the breadth of the territorial sea is measured where the outer edge of the continental margin does not extend up to that distance."

---

[1] *Continental Shelf (Tunisia/Libyan Arab Jamahiriya), Judgment, I.C.J. Reports 1982*, p. 48, para. 47.

[2] *Ibid.*, p. 48, para. 48.

[3] "The continental margin comprises the submerged prolongation of the land mass of the coastal State, and consists of the sea-bed and subsoil of the shelf, the slope and the rise. It does not include the deep ocean floor with its oceanic ridges or the subsoil thereof."

4.49 In the present case, it is undisputed between the Parties that the submarine areas which are to be delimited between them are, geologically speaking, areas of continental shelf[1]. There is no room, therefore, for the application of the distance criterion either as a basis for continental shelf entitlement or as an alleged criterion for delimitation[2].

4.50 In the presence of such an evident legal situation, it is hardly understandable how Malta could assert in paragraph 251 of its Memorial that "the Court considered the principle of distance to be relevant in a situation in which the principle of natural prolongation did not provide criteria of delimitation". The passage in the Judgment of the Court which Malta cites as evidence for this assertion does not contain such a sweeping statement by the Court. On the contrary, the Court confined itself to the following cautious remarks in respect of so-called "distance principle":

> "The question therefore arises whether the concept of the continental shelf as contained in the second part of the definition is relevant to the decision of the present case. It is only the legal basis of the title to continental shelf rights—the mere distance from the coast—which can be taken into account as possibly having consequences for the claims of the Parties. Both Parties rely on the principle of natural prolongation: they have not advanced any argument based on the 'trend' towards the distance principle. The definition in Article 76, paragraph 1, therefore affords no criterion for delimitation in the present case[3]."

4.51 Thus, the Court did not have recourse to any distance criterion in the delimitation between Tunisia and Libya, although it did find that the principle of natural prolongation did not, in that case, provide criteria for delimitation. The most that can be said is that the Court left it open whether in those cases where the title to submarine areas does not rest on natural prolongation—but on mere distance from the coast—the different quality of the basis of continental shelf entitlement might eventually affect the criteria for delimitation under the rule of applying equitable principles. Certainly, in the absence of geomorphological or geological criteria, the role of geographical factors would become more dominant.

4.52 Finally, it will be necessary to deal with the erroneous assumption by Malta that entitlement on the basis of distance—as in the case of a fishing zone or an exclusive economic zone of 200 miles—provides a criterion in favour of the equidistance or median line in the delimitation of such jurisdictional zones[1]. Here again, Malta confuses entitlement and delimitation. The 200-mile distance from the coast determines only the outward limit up to which a coastal State may claim jurisdiction over the maritime areas before its coast but does not provide criteria for the delimitation of these jurisdictional zones vis-à-vis other States. Whether the jurisdiction of the coastal State over the maritime areas before its coast is based on natural prolongation—as in the case of the continental shelf—or on distance from the coast—as in the case of fishery or exclusive economic zones—the equitable principles which govern the delimitation of such zones will, as far as geography is relevant, not be materially different in either case. The considerations which have led the Court in the *North Sea* cases to the conclusion that the equidistance method does not necessarily produce an equitable delimitation in all geographical situations are no less valid in cases of economic zone delimitation. The Court has never accepted mere distance from the coast as an indicator of the equitableness of a delimitation. The trends away from equidistance reflected in the Third Conference on the Law of the Sea and in the 1982 Convention clearly refute any suggestion that the criterion of distance—which owes its origin to the same Convention—somehow favours the equidistance method. This is the subject of Section A of Chapter 5 which immediately follows.

---

[1] As the *Libyan Memorial* and Section C of Chapter 2 above have discussed in detail, these areas of continental shelf are, however, marked by striking and unusual sea-bed and subsoil features that constitute basic discontinuites dividing the respective natural prolongations of the Parties.

[2] The Mediterranean setting of the present dispute, and in particular the constricted area of the Pelagian Sea in which this delimitation is to occur, is not an area where a criterion of distance would have any scope in any event. See *Libyan Memorial*, paras. 9.03-9.08.

[3] *Continental Shelf (Tunisia/Libyan Arab Jamahiriya), Judgment, I.C.J. Reports 1982*, p. 48, para. 48.

---

[1] See *Maltese Memorial*, para. 249. Surely the number of States that may have established 200-mile exclusive economic zones is not relevant to a consideration of Article 76 of the 1982 Convention in relation to the continental shelf (see, in this connection, para. 10 of Article 76).

CHAPTER 5

NEITHER EQUIDISTANCE NOR ANY OTHER METHOD HAS AN OBLIGATORY CHARACTER IN CONTINENTAL SHELF DELIMITATION

5.01 The Maltese Memorial is remarkable for its repeated insistence that the equidistance method is obligatory in the present case. We are told that an equitable solution must be based upon equidistance when there are opposite coasts and no "displaced islands or other unusual features[1]". We are told that the principle of non-encroachment necessitates use of the equidistance method[2]. And we are told that the "distance principle" confirms the legality of the median line[3].

5.02 These assertions would have been reckoned as bold if made during the 1958 Geneva Conference on the Law of the Sea. Being made in 1983, despite the clear trends away from equidistance manifested in the jurisprudence, in delimitation agreements between States, and in the deliberations of the Third Conference on the Law of the Sea, the assertions are extreme indeed. For the sake of clarification and accuracy, therefore, it is necessary to review the trends in the jurisprudence, in delimitation agreements between States, and in the Third Conference. This will be done in Section A immediately following. Then Sections B and C of this Chapter will take up the progressive disappearance of any distinction between "opposite" and "adjacent" States (Section B) and State practice relating to continental shelf delimitation (Section C) — all of which confirm that neither equidistance nor any other method has any obligatory character in continental shelf delimitation.

A. The Trends Away From Equidistance

1. As Reflected in the Jurisprudence

5.03 In 1969 the Court rendered the first judgment of an international court expounding the principles of law governing the delimitation of the continental shelf. It will be recalled that, following a detailed discussion of the whole history of the rule of delimitation contained in Article 6 of the 1958 Convention, the Court noted that:

---

[1] *Maltese Memorial*, para. 234(c).

[2] *Ibid.*, para. 234(k); and Chapter IX, Section 3. This proposition is extraordinary, for if the Maltese interpretation of the principle of non-encroachment is one of general application how can any method other than equidistance ever be justified?

[3] *Ibid.*, Chapter IX, Section 5. This is an equally extraordinary proposition when one considers that what Malta describes as the "distance principle" is based on the Third Conference on the Law of the Sea which refused to endorse the equidistance method. The fact that there is no so-called "distance principle" in international law that would apply to the delimitation in the present case is discussed at paras. 4.46-4.52, above.

> "In the light of this history, and of the record generally, it is clear that at no time was the notion of equidistance as an inherent necessity of continental shelf doctrine entertained[1]."

5.04 The Court also referred to the theory that the equidistance "rule" derived from the more basic, antecedent principle of proximity and commented that—

> "... the theory cannot be said to be endowed witn any quality of logical necessity either, [and] the Court is unable to accept it[2]".

5.05 This comment has immediate relevance to the present Maltese arguments, for Malta's reliance on the so-called "distance principle" to support the legality of the median line is essentially a reversion to the argument made by the Netherlands and Denmark and rejected by the Court. For "distance" and "proximity" are, in this context, simply different terms for the same idea. The Court had no hesitation in discarding any suggestion that "adjacency[3]" meant simple proximity measured in distance. Not surprisingly, therefore, the Court reached the conclusion that—

> "... the equidistance principle could not be regarded as being a rule of law on any *a priori* basis of logical necessity deriving from the fundamental theory of the continental shelf ...[4]".

5.06 In the subsequent 1977 Award by the Court of Arbitration in the *Anglo-French Arbitration* it might have been assumed that, since both France and the United Kingdom were parties to the 1958 Convention, and bound by Article 6, the equidistance method would have had an obligatory character. Yet the Court rejected this assumption. The Court held that—

> "... whether under customary law or Article 6, it is never a question either of complete or of no freedom of choice as to method; for the appropriateness — the equitable character — of the method is always a function of the particular geographical situation[5]".

5.07 The Court of Arbitration adopted, not equidistance, but "the fundamental norm that the delimitation must be in accordance with equitable principles[6]". The reliance on this Award in the Maltese Memorial is, therefore, somewhat surprising. Consistently with its emphasis on the geographical and other relevant circumstances of the particular case, the Court of Arbitration adopted a median line only between the two main and broadly similar coasts[1]. The Channel Islands were given a 12-mile "enclave" and the Scilly Islands only "half-effect". It is therefore difficult to see how this Award becomes support for the Maltese propositions that short abutting coasts have a "significant role" in delimitation[2]; or that islands have a "generally recognised significance" in maritime delimitation[3]. If Malta is to invite any comparison, based on the 1977 Award, it is with the Channel Islands and not the long, mainland coasts of either England or France in relation to which a median line was appropriate.

---

[1] *North Sea Continental Shelf, Judgment, I.C.J. Reports 1969*, p. 35, para. 55.

[2] *Ibid.*, p. 36, para. 56.

[3] For the Court's reasoning see *ibid.*, pp. 29-32, paras. 40-46.

[4] *Ibid.*, pp. 45-46, para. 82.

[5] *Anglo-French Arbitration, Decision of 30 June 1977* (Cmnd. 7438), p. 54, para. 84.

[6] *Ibid.*, p. 60, para. 97.

5.08 The 1982 *Tunisia/Libya* case was unlike the two earlier cases in that neither party invoked equidistance as a method likely to lead to an equitable result. On the contrary, both parties expressly rejected it. The Court was not, therefore, required to rule on that particular method. Nevertheless the Court did state that—

> "... there is no mandatory rule of customary international law requiring delimitation to be on an equidistance basis, [but] it should be recognised that it is the virtue—though it may also be the weakness—of the equidistance method to take full account of almost all variations in the relevant coastlines[4]."

5.09 The Court also declined even to consider using equidistance "as a first step", to be followed by such adjustments or modifications as equity might require[5], and noted that equidistance should be applied only if it leads to an equitable solution[6]. Thus, on the jurisprudence as it stands, there is no possible basis for the Maltese assertions which attempt to confer on equidistance a compelling, mandatory character: the case-law goes in an entirely opposite direction.

2. As Reflected in Delimitation Agreements

5.10 A full, detailed analysis of the State practice[7] relied on by Malta — and of the practice not cited by Malta — will be undertaken in Section C of this Chapter, and in the *Annex* of delimitation agreements.

5.11 At the present juncture it is intended to show how, contemporaneously with the rejection of equidistance as a mandatory rule by the

---

[1] *Anglo-French Arbitration, Decision of 30 June 1977* (Cmnd. 7438), pp. 88-89, para. 181 and pp. 93-94, para. 196.

[2] *Maltese Memorial*, Chapter V, Section 3.

[3] *Ibid.*, Chapter VI, Section 1(1).

[4] *Continental Shelf (Tunisia/Libyan Arab Jamahiriya), Judgment, I.C.J. Reports 1982*, p. 88, para. 126.

[5] *Ibid.*, p. 79, para. 110: cited in *Libyan Memorial*, p. 123.

[6] *Ibid.*, p. 79, para. 109: cited in *Libyan Memorial*, p. 123.

[7] Libya employs the term "State practice" in this Counter-Memorial as a convenient shorthand term for use in addressing the body of State activities referred to in the *Maltese Memorial*. The legal relevance of such practice is discussed in Section C (1), below.

Courts (and also by the Third Conference on the Law of the Sea), the reliance on equidistance began to decline in agreements of delimitation between States.

Continental Shelf Boundaries

5.12 Prior to the 1958 Conference there were relatively few agreements. Yet, significantly, the first agreement in 1942 between the United Kingdom (in respect of Trinidad and Tobago) and Venezuela did not adopt an equidistance line and made no reference to equidistance[1]. Equally significantly, the Truman Proclamation by the United States President on 28 September 1945[2] made no reference to equidistance as the basis for delimitation with neighbouring States, but referred only to the need to reach agreement according to "equitable principles". The Soviet Union/Norway agreement of 15 February 1957[3], establishing a "sea frontier" in the Varangerfjord, made no mention of equidistance or of any other specified principles, but established a series of negotiated lines between terminal points which, in relation to the continental shelf boundary, were median points.

5.13 The 1958 Convention on the Continental Shelf did not establish equidistance as a mandatory method. A detailed examination of the history of the text of Article 6 has already been made in the Court's 1969 Judgment[4] and need not be repeated here. Yet it needs to be emphasised that equidistance had only a relative role within Article 6—it operated only in the absence of agreement and in the absence of "special circumstances". As the Court of Arbitration pointed out in 1977, the whole purpose of inserting the "special circumstances" qualification was to ensure that the use of the equidistance method would always be subject to the overriding aim of securing an equitable result[5]. The opposition between equidistance and equitable principles is essentially a misconception, for equidistance is simply a method — one of many — and the use of any method is justifiable only where it produces an equitable result.

5.14 Following the 1958 Convention, agreements began to be reached and understandably, for those States parties to the 1958 Convention which saw no "special circumstances" in their case, the equidistance method was the method predominantly adopted. Yet, as late as 1969, the Court had no doubt that, despite the frequency of this use and the numerous parties to the Convention — then some 39 ratifications or accessions — there was no rule of customary international law requiring the use of equidistance. The Court, referring to the agreements adopting the equidistance principle made by parties to the 1958 Convention, stated:

---

[1] Agreement in force 22 September 1942. See *Annex* of delimitation agreements, No. 1.

[2] Proclamation No. 2667, 10 *Federal Register* 12303 (2 Oct. 1945). A copy of this Proclamation was attached as Annex 80 to the *Libyan Memorial*. A number of early unilateral State declarations also referred to boundaries with neighbouring States being determined by "equitable principles": *e.g.*, Saudi Arabia, 28 May 1949 (ST/LEG/SER.B/1, 11 January 1951, p. 22); Kuwait, 12 June 1949 (*ibid.*, p. 26); Iran, 19 June 1955. (ST/LEG/SER.B/6, December 1956, p. 26).

[3] See *Annex* of delimitation agreements, No. 4.

[4] *North Sea Continental Shelf, Judgment, I.C.J. Reports 1969*, pp. 34-35, paras. 50-53 and pp. 46-47, para. 85.

[5] *Anglo-French Arbitration, Decision of 30 June 1977* (Cmnd. 7438), p. 48, paras. 69-70; p. 54, para. 84; pp. 59-60, para. 97; and p. 92, para. 191.

> "From their action no inference could legitimately be drawn as to the existence of a rule of customary international law in favour of the equidistance principle[1]."

5.15 The practice of non-parties fully bore out this view. In 1960 France and Portugal, representing Senegal and Guinea-Bissau, reached an agreement on both the territorial sea and the continental shelf boundary, with neither boundary based on equidistance[2]. In 1968 Abu Dhabi and Dubai agreed on a boundary which, without reference to equidistance, relied on a line projected from the coast so as to leave the Fateh oil-field to Dubai[3]. In 1969 Malaysia and Indonesia agreed on a shelf boundary which made no reference to equidistance and which in its third sector (Points 21 to 25) gives increasingly less effect to the Indonesian offshore islands of Natuna Utara as these lie further away from the Indonesian mainland[4].

5.16 In the tripartite agreement of 1971 between Indonesia, Malaysia and Thailand, the Malaysia/Thailand continental shelf boundary (from the common tripoint to Points 1, 2, 3) is not an equidistant boundary and no reference is made in the text of the agreement to its basis[5]. The analysis of the Geographer of the United States Department of State assumes it to be "negotiated on the basis of equitable principles[6]". Similarly, the two agreements negotiated in 1971 by the Federal Republic of Germany with Denmark[7] and the Netherlands[8], following the 1969 Judgment of the Court, did not adopt equidistance.

5.17 In 1972 Australia and Indonesia agreed[9] to a sea-bed boundary in the Timor and Arafura Seas, neither mentioning equidistance nor using it, being influenced more by the significant feature of the Timor Trench[10].

---

[1] *North Sea Continental Shelf, Judgment, I.C.J. Reports 1969*, p. 43, para. 76.

[2] Agreement by Exchange of Notes, 26 April 1960, presumed to be still in force. See *Annex* of delimitation agreements, No. 6.

[3] Agreement of 18 February 1968. See *Annex* of delimitation agreements, No. 15.

[4] Agreement of 27 October 1969. See *Annex* of delimitation agreements, No. 22.

[5] Agreement of 21 December 1971, in force 16 July 1973. See *Annex* of delimitation agreements, No. 29.

[6] *Limits in the Seas*, Office of the Geographer, Department of State, Washington, D.C., No. 81, 27 December 1978, p. 6. A copy of this page is attached as *Documentary Annex 31*.

[7] Agreement of 28 January 1971. See *Annex* of delimitation agreements, No. 10.

[8] Agreement of 28 January 1971. See *Annex* of delimitation agreements, No. 7.

[9] Agreement of 9 October 1972, supplementary to the Agreement of 18 May 1971. See *Annex* of delimitation agreements, No. 24.

[10] For discussion of this feature and the agreement in more detail see *Libyan Memorial*, para. 6.48, and paras. 5.70-5.75, below.

5.18 In 1974 two agreements were reached which reflected the realisation that equidistance was neither the obligatory rule between opposite States, nor likely to produce an equitable result. The first was the agreement between Japan and Korea which, without reference to equidistance, in the area south of the Korean Strait where the shelf opens out into the East China Sea, established a Joint Development Zone rather than a boundary[1]. Four months later, in 1974, Sudan and Saudi Arabia agreed on a Common Zone of exploration for the resources of the sea-bed and subsoil, and not an equidistance boundary[2]. Like Korea and Japan, Saudi Arabia and the Sudan are States with opposite coasts. Whilst it may be said that these two agreements are not relevant to boundary delimitation, since they did not involve agreement on a boundary, it is equally clear that they flatly contradict the assumption that, between States with opposite coasts, the law requires a median line. The solution of a joint development zone reflects the view of at least one of the parties that a median line boundary was neither appropriate nor required by law, and the agreements accept that view.

5.19 Contemporaneously with these agreements, an agreement was reached between France and Spain over the Bay of Biscay[3]. This 1974 agreement was both a territorial sea and a continental shelf agreement. So far as the latter is concerned, it is composed of two segments, the first only depending on equidistance: the second segment (Point R to Point T) being negotiated on the basis of equitable principles, reflecting the greater length of the French coastline as compared with the Spanish[4]. Moreover, like the other two agreements referred to above, the parties adopted a joint development zone, although this was done in conjunction with a boundary, which it straddles. The significance of this agreement is considerable. For here we have two States which, even though parties to the 1958 Convention, felt it necessary to depart from equidistance in order to give effect to equitable principles. Nothing could illustrate better the decline in the reliance on equidistance. And, indeed, France was to maintain its opposition to the proposition that equidistance was synonymous with an equitable result in its dispute with the United Kingdom, a dispute currently in negotiation at the same time[1].

---

[1] Agreement of 5 February 1974. See *Annex* of delimitation agreements, No. 35.

[2] Agreement of 16 May 1974, in force 26 August 1974. See *Annex* of delimitation agreements, No. 37.

[3] Agreement of 29 January 1974, in force 5 April 1975. See *Annex* of delimitation agreements, No. 34.

[4] *Limits in the Seas*, No. 83, 12 February 1979, Analysis, pp. 13-14. A copy of these pages is attached in *Documentary Annex 31*. An authoritative statement of the rationale for French practice can be found in the statement made by Mr. Guillaume, Director of Legal Affairs in the French Foreign Ministry, on the subject of "Les Accords de Délimitation Maritime passés par la France", made to the Colloque de la Société Française pour le Droit International, at the Faculté de Droit de Rouen on 2-4 June 1983. He stated at p. 10—

> "... de nombreux accords de délimitation conclus par la France retiennent comme ligne de délimitation *la ligne d'équidistance, jugée en l'espèce conforme à l'équité*. Ainsi en va-t-il des accords passés avec l'Espagne (à propos de la délimitation de la mer territoriale dans le golfe de Gascogne), Tonga, Maurice, Sainte Lucie, l'Australie (aussi bien dans l'océan Pacifique que dans l'océan Indien), le Royaume-Uni (à propos de la délimitation du plateau continental en Manche orientale)."
>
> "En revanche, d'autres délimitations impliquaient pour parvenir à une solution équitable que l'on *s'écartât de l équidistance, dès lors que celle-ci était inéquitable pour la France ou pour l'Etat avec lequel nous nous délimitions.*"

A copy of this page is attached in *Documentary Annex 32*.

5.20 In 1981 Iceland and Norway concluded an agreement[2] on the continental shelf, thereby adopting the recommendations of a Conciliation Commission[3]. In Article 1 of the agreement, the parties agreed that the shelf boundary should coincide with the delimitation line for the economic zones, and they had previously agreed that the economic zone boundary should afford to Iceland the full 200-mile limit[4]. Given that the shortest distance between Iceland and Jan Mayen Island was 290 miles, this necessarily meant that the boundary between the two opposite islands lay far north of any median line — and of course Jan Mayen is small compared to Iceland.

Maritime Boundary Agreements

5.21 The practice of adopting "maritime" as opposed to "continental shelf" boundaries is more recent and is symptomatic of the desire of some States to move towards a new legal régime which would eliminate the distinction, made in 1958, between the régime of the continental shelf and the régime of the superjacent waters[5]. The fact that such maritime boundaries do govern both shelf and superjacent waters does mean that their relevance to purely continental shelf boundaries has to be approached with caution. Subject to this *caveat*, however, it is noteworthy that many of the newer maritime boundaries demonstrated the same movement away from any notion that the equidistance boundary was required by law, or was to be treated as synonymous with an "equitable result".

---

[1] GUILLAUME, G., *op. cit.*, p. 11, indicates that failure to agree boundaries with Italy and Spain relative to Corsica, Sardinia and the Balearic Isles is in part due to France's opposition to equidistance on the ground that it would be inequitable in the circumstances. A copy of this page is attached in *Documentary Annex 32*.

[2] Agreement of 22 October 1981, in force 2 June 1982. See *Annex* of delimitation agreements, No. 70.

[3] For the Report of the Commission see 20 *International Legal Materials* (1981), p. 797.

[4] See the preamble to the agreement. The element of compromise, distinct from the boundary, lay in the establishment of a zone for joint development (not unlike the Japan/Korea and Sudan/Saudi Arabia arrangements — see para. 5.18 above). Iceland was to have rights of participation in exploration within the zone north of the boundary, and Norway, rights in the area south of the boundary.

[5] This trend had, of course, been anticipated by Chile, Ecuador and Peru in the Santiago Declaration on the Maritime Zone of 28 August 1952; and, by an Agreement of 4 December 1954, these three countries adopted maritime boundaries which did not use equidistance but adopted the parallel of latitude from the terminal point of their land frontiers (together with the special feature of a 10 mile "buffer zone" either side of this parallel). See *Annex* of delimitation agreements, Nos. 2 and 3.

5.22 In 1975, Colombia and Ecuador agreed a maritime boundary making no reference to equidistance and adopting as the boundary the parallel of latitude which intersected with the point at which the land boundary between the two countries reached the sea[1]. In the following year, 1976, Colombia concluded an agreement with Panama delimiting maritime boundaries in the Pacific and the Caribbean. In the latter, although utilising equidistance over the first sector, the method over the second sector (Points H to M) was quite different and involved a series of "stepped" straight lines. Similarly, in the Pacific, over the second sector the boundary is the 5°00′ N parallel of latitude and not equidistance.

5.23 In the following year, 1977, Colombia continued the same policy in its agreement with Costa Rica[2]. No principles of boundary delimitation are specified in the agreement[3], and the boundary is in fact two straight lines, at right angles to each other, lying between the mainland of Costa Rica and the Colombian islands of Cayos de Albuquerque, Cayos del Este Sudeste and Isla San Andrees.

5.24 Two years earlier this same trend away from equidistance was made manifest by African States. In 1975, The Gambia and Senegal adopted an agreement on a maritime boundary (or rather two boundaries, since The Gambia has Senegalese territory to the north and south)[4]. Both boundaries use a parallel of latitude, not equidistance. On the far side of Africa the same trend could be observed. On 17 December 1975, Kenya initiated an Exchange of Notes with Tanzania which led to an agreement of 9 July 1976[5]. This agreement embodied a maritime boundary in three segments. The first, close inshore and out to the 12-mile limit, adopted equidistance. The second (between the mainland and the island of Pemba offshore) used equidistance, but from selected basepoints. But the third segment, the boundary reaching out into the Indian Ocean, was a parallel of latitude and not equidistance.

5.25 In 1978, Venezuela agreed a maritime delimitation with the Netherlands, affecting the Netherlands Antilles (Aruba, Bonaire, Curaçao), which made no reference to equidistance but which was "based on equitable principles[6]". The line agreed did not utilise equidistance. In the same year, 1978, Venezuela and the United States agreed a maritime boundary designated as an "equitable" maritime boundary containing no reference to equidistance, based on geodetic lines[1]. Also in 1980 Costa Rica and Panama agreed maritime boundaries in the Caribbean Sea and in the Pacific[2]. No reference is made to equidistance in the preamble, nor to any other method: in the text, however, the median line is referred to. Yet the lines adopted are, in fact, straight lines which the United States Geographer to the State Department characterises as "more akin to a perpendicular to the general direction of the coast[3]".

---

[1] Agreement of 23 August 1975, in force 22 December 1975. See *Annex* of delimitation agreements, No. 44.

[2] Agreement of 17 March 1977. See *Annex* of delimitation agreements, No. 50.

[3] See *Limits in the Seas, op. cit.*, No. 84, p. 5, for the conclusion of the U.S. Department of State Geographer: "The delimitation appears to have been negotiated on the basis of equitable principles established by agreement between the two states." A copy of this page is attached in *Documentary Annex 31*.

[4] Agreement of 4 June 1975, in force 27 August 1976. See *Annex* of delimitation agreements, No. 43.

[5] See *Annex* of delimitation agreements, No. 46.

[6] Agreement of 31 March 1978. See *Annex* of delimitation agreements, No. 57.

5.26 Also in 1978, Australia concluded a comprehensive agreement with Papua New Guinea, embracing maritime boundaries[4]. The equidistance method was not used, either in relation to the territorial seas or maritime jurisdiction: the boundary line adopted was a series of straight lines between the two opposite territories.

5.27 If a broad conclusion has to be framed as to the trend of delimitation agreements, then it would be that the equidistance method never was adopted as an obligatory method, that particularly after the Court's 1969 Judgment the incidence of its use declined, and this trend was accentuated in the newer move towards maritime boundaries. This is not to deny that in relation to broadly similar, equal coasts (in the absence of other factors) the method proved both convenient and consistent with an equitable result. It is this that accounts for the use of the equidistance method in the agreements so far reached. Yet there is clear evidence that States felt no obligation to adopt that method, and frequently discarded it where its results would have proved inequitable.

5.28 There is yet a final, and important, point to be made about delimitation agreements. To concentrate on these agreements is to look at only a part of the practice. For in many cases agreement has not been reached previously because one (or even both) of the parties to the dispute did not accept that, failing agreement, equidistance provided the applicable rule. In short, the fact that there are many unresolved shelf boundaries is eloquent testimony against the Maltese contention that equidistance is the applicable rule[5].

---

[1] Agreement of 28 March 1978, in force 24 November 1980. See *Annex* of delimitation agreements, No. 56. Note also the U.S.-Mexico Treaty on Maritime Boundaries of 4 May 1978. See *Annex* of delimitation agreements, No. 23. This is not yet in force, but the line, recognised as "practical and desirable" is not an equidistance line but a series of geodetic lines, varying only slightly from the parallel of latitude from the land frontier eastwards. In the Pacific, the geodetic lines are more irregular.

[2] Agreement of 2 February 1980, in force 11 February 1982. See *Annex* of delimitation agreements, No. 64.

[3] *Limits in the Seas, op. cit.*, No. 97, p. 5. A copy of this page is attached as *Documentary Annex 31*. With straight, adjacent coasts, the perpendicular method and equidistance will produce similar results. In this particular case, however, in the Caribbean the two would coincide only over the first 32 miles of a 100 mile boundary: the actual line thus ignores the offshore islands of Isla de Colon (Panama) and Punta Mona (Costa Rica). In the Pacific, various offshore irregularities are ignored.

[4] Agreement of 18 December, 1978. See *Annex* of delimitation agreements, No. 60.

[5] See para. 5.97, below.

3. As Reflected in the Third Conference on the Law of the Sea

5.29 It is common knowledge that, throughout the Third Conference, the discussion of the principles to govern delimitation of both the continental shelf and the exclusive economic zone gave rise to acute controversy. In Negotiating Group No. 7 the basic rift was between States favouring specific reference to equidistance (though not necessarily as an obligatory rule) and those States favouring a simple reference to "equitable principles". Of the total membership of the Group, the majority were those favouring the reference to "equitable principles" and not equidistance[1].

5.30 The fact that the majority were opposed to any text recognising equidistance as a "general principle" is perfectly consistent with the trend away from equidistance reflected in the jurisprudence and in State practice. Indeed, the "equidistance" group was attempting, essentially, to reverse the trend which had developed. In the Conference the Chairman of the Second Committee quite properly sought to resolve the impasse[2] by a compromise formula which, in the terms of the Single Negotiating Text of 7 May 1975, was as follows:

> "Article 70(1)
>
> The delimitation of the continental shelf between adjacent or opposite States shall be effected by agreement in accordance with equitable principles, employing, where appropriate, the median or equidistance lines and taking account of all the relevant circumstances[3]."

5.31 This text was maintained in Article 71 of the revised text of 6 May 1976[4], and in what became Article 83 of the ICNT of 15 July 1977[5]. With very slight revisions, this text remained in being through the revision of April 1980[6] and the official negotiating text of September 1980[7].

---

[1] Within Negotiating Group No. 7, some 26 States favoured equidistance and 33 favoured "equitable principles". Of the former, 20 were in 1978 co-sponsors of Document NG 7/2 proposing an equidistance formula "as a general principle". (The supporters of this formula constituted the so-called "group of 22", only 21 of whom co-sponsored Document NG 7/2/Rev. 1 of 25 March 1980). There were 27 co-sponsors of Document NG 7/10, which envisaged an agreement "in conformity with equitable principles". Document NG 7/10/Rev.1 of 25 March 1980 modified the formula slightly to "in accordance with equitable principles" and was co-sponsored by 29 delegations, all of them being members of the so-called "Group of 33". A copy of Doc. NG 7/2/Rev. 2 and Doc. NG 7/10/Rev.2 is attached as *Documentary Annex 33*.

[2] The impasse was clearly recognised in the Report of the Chairman on the work of Negotiating Group No. 7: NG 7/45, 22 August 1979.

[3] U.N. Doc. A/CONF. 62/WP. 8. Part II. Copies of the successive drafts of this article are attached to the *Libyan Memorial* in Annex 100.

[4] U.N. Doc. A/CONF. 62/WP.8/Rev. 1/Part II.

[5] U.N. Doc. A/CONF. 62/WP. 10.

[6] U.N. Doc. A/CONF. 62/WP.10/Rev.2.

[7] U.N. Doc. A/CONF. 62/WP.10/Rev.3: the last phrase became "and taking account of all circumstances prevailing in the area concerned".

5.32 Yet, in the draft Convention of 28 August 1981[1], a significant change occurred: the reference to the equidistance or median line disappeared *entirely* and Article 83(1) read as follows:

> "The delimitation of the continental shelf between States with opposite or adjacent coasts shall be effected by agreement on the basis of international law, as referred to in Article 38 of the Statute of the International Court of Justice, in order to achieve an equitable solution."

The text adopted by the Conference virtually adopted this approach, maintaining the English text and making slight, textual alterations in the translations[2].

5.33 The importance of this trend within the Conference is manifest. It points quite clearly to the decline of equidistance. It is totally incompatible with the Maltese argument which seeks to reassert equidistance as the rule, and to treat equidistance as synonomous with an equitable result.

B. The Progressive Disappearance of Any Distinction Between "Opposite" and "Adjacent" States

5.34 In Article 6 of the 1958 Convention on the Continental Shelf, paragraphs 1 and 2 of that Article dealt separately with "opposite" and "adjacent" coasts or territories[3]. Yet, as the text indicates, there was no essential difference between the two: the median line "every point of which is equidistant from the nearest points of the baselines" was, as a method, indistinguishable from "the principle of equidistance from the nearest points of the baselines". In terms of geometry, the exercise was the same. The *travaux préparatoires* do not reveal any indication that the States represented at the 1958 Conference or, indeed, the International Law Commission before that, saw this distinction as having legal relevance. On the contrary, the proceedings of the Geneva Conference confirm that the legal principle is the same in both cases.

5.35 In its draft articles the International Law Commission had made a distinction between "opposite" and "adjacent" coasts for the delimitation of the territorial sea (Articles 12 and 14) as well as for the delimitation of the continental shelf (Article 72). Article 12 of the draft dealt with the delimitation of the territorial sea between opposite coasts, while Article 14 dealt with the delimitation of the territorial sea of two adjacent States.

5.36 At the 1958 Conference, the Norwegian delegation proposed to join the two rules together and to adopt one single rule, arguing that—

---

[1] U.N. Doc. A/CONF. 62/L.78.

[2] U.N. Doc. A/CONF. 62/122, 7 October 1982.

[3] Note the contrast with Article 12(1) of the 1958 Convention on the Territorial Sea and Contiguous Zone which, in providing also for the rule that, absent agreement or special circumstances, the median line every point of which is equidistant from the nearest point on the baselines should apply to determine the boundary, made no separation between opposite or adjacent coasts.

> "... the problems dealt with in the two articles were so closely interrelated as in some cases to be practically indistinguishable[1]".

and that:

> "The merging of articles 12 and 14 was merely a matter of drafting; the substance of the two articles was so similar that they would be better combined[2]."

5.37 According to this proposal, a new rule was adopted by the First Committee of the Conference, dealing with the problems of the territorial sea and contiguous zone, and the new rule became Article 12 of the Convention on the Territorial Sea and Contiguous Zone.

5.38 In the Fourth Committee, dealing with the continental shelf, a similar proposal was made by the delegate of Norway, who drew attention to the fact that the problems dealt with in Article 72 of the draft (subsequently Article 6 of the 1958 Convention) were similar to those covered by Articles 12 and 14. He suggested that any drafting change in the text of Articles 12 and 14 should therefore be taken into consideration by the Drafting Committee and also be incorporated into Article 72[3]. Although no delegation spoke against this latter suggestion, it was not followed up, so that the differences existing between Article 6 of the Convention on the Continental Shelf and Article 12 of the Convention on the Territorial Sea are more the consequence of a lack of coordination in drafting than the result of differences between States on the principles involved in the provisions of the two conventions[4].

5.39 In its 1969 Judgment the Court adverted to this distinction between paragraphs 1 and 2 of Article 6, and saw in it not a legal difference but a possible practical difference. It noted that, with opposite coasts and where each State could lay claim to the area as a natural prolongation of its territory:

> "These prolongations meet and overlap, and can therefore only be delimited by means of a median line; and, ignoring the presence of

---

[1] United Nations Conference on the Law of the Sea, *Official Records*, Vol. III, p. 188. A copy of this page is attached in *Documentary Annex 34*.

[2] *Ibid.*, p. 190. A copy of this page is attached in *Documentary Annex 34*.

[3] *Idem, Official Records*, Vol. VI, p. 92.

[4] The European Fisheries Convention of 9 March, 1964, adopted also a single rule (Article 7) for the delimitation of exclusive fishing zones as between neighbouring States, whether opposite or adjacent: "Where the coasts of two Contracting Parties are opposite or adjacent to each other, neither of these Contracting Parties is entitled, failing agreement between them to the contrary, to establish a fisheries régime beyond the median line, every point of which is equidistant from the nearest points on the low water lines of the coasts of the Contracting Parties concerned." *New Directions in the Law of the Sea*, Documents. Vol. 1, Oceana Publications, New York, 1973, p. 42. A copy of this page is attached as *Documentary Annex 35*.

> islets, rocks and minor coastal projections, the disproportionally distorting effect of which can be eliminated by other means, such a line must effect an equal division of the particular area involved[1]."

The Court went on to say that if — contrary to its assumption that there was a practical difference — there was no difference between the two situations, the results ought to be the same: but the tendency of a lateral equidistance line (between adjacent States) to leave to one party areas that are the natural prolongation of the other confirmed the Court in its impression that there was a practical difference[2].

5.40 In his dissenting opinion under this Judgment, Judge *ad hoc* Sörensen wrote:

> "The geographical terms used in the two paragraphs of Article 6 are not quite precise. Paragraph 1 refers to two or more States 'whose coasts are opposite each other' while paragraph 2 refers to 'adjacent States'. These two provisions thus seem to envisage two distinct types or models of geographical configuration. The realities of geography, however, do not always conform to such abstract models. The coastlines of adjacent States (i.e., States having a common land frontier) may confront each other as opposite coasts in their further course from the point where the common land frontier meets the sea. Thus the same coastline may fall under the provisions of both paragraphs. Neither expressly nor implicitly does Article 6 provide any exact and rational criterion for deciding when, and to what extent, two coastlines are adjacent and when they are opposite[3]."

5.41 In the 1977 *Anglo-French Arbitration*, the Court of Arbitration entirely endorsed the International Court's view that there was a practical difference, but no legal difference.

> "The rules of delimitation laid down in the two paragraphs of Article 6 are essentially the same ... both the legal rule and the method of delimitation prescribed in the two paragraphs are precisely the same. Consequently, there is nothing in the language of

---

[1] *North Sea Continental Shelf, Judgment, I.C.J. Reports 1969*, p. 36, para. 57. Note that the Court also postulated the situation of a third State on one of the coasts, giving rise to a separate area of "natural prolongation" to be treated in the same way.

[2] *Ibid.*, p. 37, para. 58:

> "If on the other hand, contrary to the view expressed in the preceding paragraph, it were correct to say that there is no essential difference in the process of delimiting the continental shelf areas between opposite States and that of delimitations between adjacent States, then the results ought in principle to be the same or at least comparable. But in fact, whereas a median line divides equally between the two opposite countries areas that can be regarded as being the natural prolongation of the territory of each of them, a lateral equidistance line often leaves to one of the States concerned areas that are a natural prolongation of the territory of the other."

[3] *Ibid.*, p. 250.

> Article 6 to imply that in situations falling under paragraph 1 the virtues of the equidistance principle as a method effecting an equitable delimitation are in any way superior to those which it possesses in situations falling under paragraph 2. The emphasis placed in the *North Sea Continental Shelf* cases on the difference between the situations of 'opposite' and 'adjacent' States reflects not a difference in the *legal* regime applicable to the two situations but a difference in the *geographical* conditions in which the applicable legal regime operates[1]."

5.42 It was the geographical difference which, in its effect on the geometry of the equidistance method, produced the greater, potential risk of inequity in laterally-related coasts rather than opposite coasts. In explaining this factor, the Court of Arbitration stated that—

> "... this is simply because of the geometrical effects of applying the equidistance principle to an area of continental shelf which, in fact, lies between coasts that, in fact, face each other across that continental shelf. In short, the equitable character of the delimitation results not from the *legal* designation of the situation as one of 'opposite' States *but from its actual geographical character as such*. Similarly, in the case of 'adjacent' States it is the lateral geographical relation of the two coasts, when combined with a large extension of the continental shelf seawards from those coasts, which makes individual geographical features on either coast more prone to render the geometrical effects of applying the equidistance principle inequitable than in the case of 'opposite' States. The greater risk in these cases that the equidistance method may produce an inequitable delimitation thus also results not from the *legal* designation of the situation as one of 'adjacent' States but *from its actual geographical character as one involving laterally related coasts*[2]."

The Court of Arbitration was not prepared to accept that whether an equidistance delimitation was equitable or not depended upon whether it was a delimitation between opposite or adjacent coasts. Directly contrary to Malta's thesis, the Court of Arbitration held—

> "... that the answer to the question whether the effect of individual geographical features is to render an equidistance delimitation 'unjustified' or 'inequitable' cannot depend on whether the case is *legally* to be considered a delimitation between 'opposite' or between 'adjacent' States[3]".

5.43 Indeed, the Court of Arbitration was prepared to view the so-called Atlantic Sector as a sea-bed area which, even if, legally, it lay between "opposite" coasts, was more analogous to an area lying off adjacent coasts[1]. This was simply because, given the geographical circumstances, the boundary remained controlled, as an equidistance line, by the same control points in the Scillies and Ushant over a very great distance, thus aggravating any distorting effect produced by the Scillies.

---

[1] *Anglo-French Arbitration, Decision of 30 June 1977* (Cmnd. 7438), p. 112, para. 238.

[2] *Ibid.*, p. 112, para. 239.

[3] *Ibid.*, p. 113, para. 240.

5.44 A further factor which tended to minimise the distinction between "opposite" and "adjacent" coasts was undoubtedly the recognition that, in many situations, a shelf boundary which began as a lateral boundary became a median line boundary (or *vice versa*) as the geographical relationship of the coasts changed. As the Court noted in its 1982 Judgment in the *Tunisia/Libya* case:

> "The major change in direction undergone by the coast of Tunisia seems to the Court to go some way, though not the whole way, towards transforming the relationship of Libya and Tunisia from that of adjacent States to that of opposite States, and thus to produce a situation in which the position of an equidistance line becomes a factor to be given more weight in the balancing of equitable considerations than would otherwise be the case[2]."

Thus, the Court in effect acknowledged that there is no sharp dichotomy between opposite and adjacent coasts. It is a question of degree and the one situation may merge into the other, without it being possible to specify the precise point at which the change of relationship occurs. But, most important, there is no particular point in attempting to specify such a precise point, because there are no legal consequences which flow from this change of relationship. The most that can be said (as the Court noted) is that equidistance can be given more weight, normally, in an opposite coasts relationship, because it is less susceptible to distortion than in an adjacent coasts relationship. Yet this is simply one consideration to be placed in the general balancing of all the equitable considerations. It is a view quite at variance with the Maltese argument which would give equidistance some kind of automatic role in situations of opposite coasts, as if there were some irrebuttable presumption of the equity of the result.

5.45 These same considerations which have influenced the way in which the Courts have looked at the "opposite-adjacent" distinction undoubtedly influenced those responsible for the preparation of the draft of the 1982 Law of the Sea Convention. The successive negotiating texts and the text finally adopted for Article 83(1) of the Convention deal with opposite or adjacent coasts in the same paragraph, and govern them by exactly the same rule.

---

[1] *Anglo-French Arbitration, Decision of 30 June 1977* (Cmnd. 7438), p. 113, paras. 241-242.

[2] *Continental Shelf (Tunisia/Libyan Arab Jamahiriya), Judgment, I.C.J. Reports 1982*, p. 88, para. 126. See also paras. 5.92-5.95, below where examples of delimitation agreements are discussed in this light.

5.46 Of course, one of the reasons for the change from the separate treatment in paragraphs 1 and 2 of Article 6 of the 1958 Convention to the uniform treatment in paragraph 1 of Article 83 of the 1982 Convention is that equidistance, as a method, has lost any claim to priority (if indeed it ever had one) as a method and is not even mentioned in the final text of Article 83.

5.47 As we have seen, much of the judicial discussion of the practical difference between opposite and adjacent coasts was in the context of the equidistance method. The increased tendency to distortion, to produce an inequitable result, in an adjacent coast situation arose when the equidistance method was applied. But if some other method was applied, not dependent on the simple factor of proximity of the line to the nearest basepoints, this concern with distortion disappeared. Hence, given that contemporary law does not acknowledge any special claim to the use of the equidistance method, it follows that the distinction between adjacent and opposite coasts itself loses significance.

5.48 The Maltese thesis is, therefore, misconceived. There has never been any legal difference between opposite or adjacent coasts — even assuming the equidistance method was the appropriate method — except in the purely practical sense that Courts acknowledged the increased risk of distortion with a lateral line and therefore accepted the need to offset any such distortion by a careful balancing of all the equitable considerations. With other methods, not even that practical difference counted, so the distinction between the two situations was irrelevant. The true test remains that of the equity of the result in the light of all the relevant circumstances. Malta would seek to evade that test by a presumption in favour of equidistance, as between opposite coasts, ignoring all the relevant circumstances and the equity of the result.

C. State Practice Relating to Continental Shelf Delimitation[1]

5.49 As was brought out in paragraph 5.01 above, it is repeatedly asserted in the Maltese Memorial, in a number of different ways, that equidistance is obligatory in the present case. The main support for this conclusion is claimed to lie in a collection of delimitation agreements and national legislation that Malta classifies as "State practice". Malta seems to stop short of a flat statement that such practice establishes — at least as to States with opposite coasts — that application of the equidistance method is a principle or rule of customary international law in the delimitation of the continental shelf. As has been shown in the previous sections of this Chapter, such a demonstration would be contradicted not only by the jurisprudence of the Court but also by State practice itself, as well as by the trends manifested in the 1982 Convention. Malta has, however, advanced an equally untenable proposition that in State practice "it was recognised that island States and island dependencies were entitled to a median line delimitation whenever the situation was that of opposite States[1]". As Malta's own recitation of delimitation agreements makes clear, this is simply not true. This section will demonstrate that there are many examples of State practice where islands were not accorded a "median line delimitation" with "opposite States"[2].

---

[1] See fn. 7 to p. 104, above.

5.50 Malta has also pushed the argument onto quite different terrain. Malta has in fact erected as a pillar of its case in favour of equidistance the claim that State practice provides an "objective" test of an equitable result in the present case. It is instructive to quote from the Maltese Memorial in this respect:

> "There is an evident value in recourse to the practice of States in like and comparable situations as an objective reflection of the application of equitable principles leading to an equitable result[3]."

The basic legal, factual and logical fallacies in this statement need to be exposed.

5.51 State practice is deployed in three parts of the Maltese Memorial in support of three different contentions[4]:

> —the significant role of short abutting coasts[5];
>
> —the entitlement of island dependencies and island States to appurtenant shelf areas under customary international law[6]; and
>
> —as an "objective reflection of the application of equitable principles leading to an equitable result" and hence allegedly establishing the equity of equidistance in the present case; and as "an unequivocal demonstration of the persistence of the equidistance method of delimitation in the case of opposite States[7]".

---

[1] *Maltese Memorial*, para. 154(c).

[2] For example, Indonesia did not receive full equidistance in its delimitation with Australia. Nor did the Dutch Antilles receive a "median line delimitation" with Venezuela, nor the Pelagian Islands of Italy with Tunisia. Many islands in the Arabian-Persian Gulf also did not receive full equidistance treatment with States lying opposite them. There are numerous other examples that could be cited; these are discussed in the *Annex* of delimitation agreements.

[3] *Maltese Memorial.*, para. 184.

[4] Malta devoted over 40 pages, almost one-third of its *Memorial*, to a discussion of State practice.

[5] *Maltese Memorial*, paras. 121-126.

[6] *Ibid.*, paras. 154-157.

[7] *Ibid.*, paras. 184-200.

It is the first and third of these contentions to which the following paragraphs are primarily addressed, although it will be necessary to touch upon the second point as well.

5.52 Libya considers it incorrect to assert, as Malta does, that State practice "gives the strongest possible indication of the appropriateness — the equitable nature — of the method of equidistance in delimitation of the areas of continental shelf which appertain to Malta and Libya respectively[1]." For what Malta is in fact arguing is that "the strongest possible indication" of an equitable result does not derive from the weighing and balancing-up of the facts and relevant circumstances of the present case, but rather is based on a method that third States have used on occasions (but by no means invariably) to delimit maritime areas that bear no factual relationship to the setting between Libya and Malta. Since States X and Y have employed equidistance, so the Maltese thesis goes, equidistance must also be applied in this case. Such a thesis not only mistakes the legal relevance of State practice, as shall be demonstrated further on in this Section, it also ignores both the relevant circumstances of the present case and the many examples where third States have chosen methods completely unrelated to equidistance to delimit their continental shelves. Most serious of all, such an approach to State practice ignores what has been so clearly indicated in the jurisprudence, namely that each case must be determined in accordance with equitable principles and on the basis of its own particular facts[2].

5.53 It is necessary at this stage to call attention to a subtle shift that occurs in Malta's presentation of State practice. In paragraph 195 of its Memorial Malta stresses the importance of focussing on situations which are "legally comparable" to that of Libya and Malta. Despite the ambiguity of this statement, the inference seems to be that by "legally comparable" Malta means situations involving delimitations between States with opposite coasts. Again in paragraph 211(b) Malta draws attention to State practice in situations "legally comparable" with the relationship of Libya and Malta as one of the "key elements" in Malta's position. But then comes the shift — on the second to last page of the Maltese Memorial it is stated: "Virtually every relevant instance of State practice affirms the equitable character of the method of equidistance in *comparable geographical situations*[3]". Where in Malta's Memorial may be found any discussion at all of how the examples of State practice cited by Malta are geographically comparable to the setting between Libya and Malta? Is the geographic situation between Italy and Yugoslavia[4]—two mainland States with coastlines of comparable length — similar to that between Libya and Malta? Is the geographic situation between two small islands such as Mauritius and Réunion[1] or between Tonga and the islands of Wallis and Futuna[2] or between Martinique and St. Lucia[3] similar to that between Libya and Malta? However, before discussing specific examples of State practice in greater detail, it is appropriate to review briefly the overall relevance of State practice from the legal point of view in the light of the contentions raised by Malta and of the fact that a major portion of Malta's case rests on such practice.

---

[1] *Maltese Memorial*, para. 195. A similar contention is made in para. 109 where it is argued that State practice provides confirmation that equidistance is "equitable" in the present case.

[2] *Continental Shelf (Tunisia/Libyan Arab Jamahiriya), Judgment, I.C.J. Reports 1982*, p. 60, para. 72. See also para. 5.96 below.

[3] *Maltese Memorial*, para. 272(e). [Italics added.]

[4] *Ibid.*, para. 196(a) and see the map on p. 97.

1. The Legal Relevance of State Practice

5.54 State practice, whether in the form of national legislation enacted unilaterally by a State or in the form of delimitation agreements between two or more States, must be viewed with some caution. This is primarily because State practice, and particularly delimitation agreements, rarely specify all the factors considered by the parties in reaching the ultimate solution. Care, therefore, must be used in the manner in which examples of State practice are interpreted. As one commentator, who is cited in the Maltese Memorial, has noted:

> "It is necessary to state two *caveats* on the use and interpretation of state practice. First, and most important, agreements on delimitation do not always disclose the method employed to arrive at a boundary line, if indeed a 'method' was used. In such cases there is obviously considerable latitude for speculation as to how the agreed boundary was located...."
>
> "Second, the very existence of an agreement implies that disincentives to agreement, such as the presence of islands, either were regarded as insignificant by the parties or were overcome by independently operating incentives such as the desire to exploit resources. In either case, care must be taken in the generalization of principles contained or exemplified in these agreements to *all* delimitation disputes[4]."

5.55 This Court had the opportunity to address the question of the legal relevance of this aspect of State practice in the *North Sea* cases. In the course of those proceedings examples of State practice were introduced to support the contention that Article 6 of the 1958 Convention expressed a rule of international law governing the delimitation of the continental shelf. The Court indicated in its Judgment that the practice cited was not of such a character that an inference could be drawn that equidistance represented a rule of customary international law. Even as to those agreements where the equidistance method apparently had been used, the Court indicated that —

---

[1] *Maltese Memorial*, para. 193(c) and the map on p. 90.

[2] *Ibid.*, para. 193(b) and the map on p. 89.

[3] *Ibid.*, para. 193(f) and the map on p. 93.

[4] KARL, D. E., "Islands and the Delimitation of the Continental Shelf: A Framework for Analysis", *American Journal of International Law*, Vol. 71, 1977, pp. 642-673 at pp. 651-652, n. 35. A copy of these pages is attached as *Documentary Annex 36*.

> "... no inference could justifiably be drawn that [the States involved] believed themselves to be applying a mandatory rule of customary international law. There is not a shred of evidence that they did and, as has been seen (paragraphs 22 and 23), there is no lack of other reasons for using the equidistance method, so that acting, or agreeing to act in a certain way, does not of itself demonstrate anything of a juridical nature[1]."

Thus, from the standpoint of legal relevance, the Court observed that not only would the practice in question have to amount to a "settled practice", it would also have to be such that the parties involved believed that their delimitation agreements were rendered obligatory by a rule of law. As the Court stated:

> "The States concerned must therefore feel that they are conforming to what amounts to a legal obligation[2]."

5.56 It is hardly surprising that Malta has failed to offer any evidence to suggest that in the examples cited in its Memorial the parties involved believed they were obligated to employ the equidistance method as a principle or rule of customary international law. But this has not deterred Malta from asserting — despite the clear indications to the contrary discussed earlier in this Chapter — that there exists a "cardinal principle" that "in the case of a continental shelf dividing opposite States, the delimitation is normally by means of a median line[3]."

5.57 In Libya's view there is no such "cardinal principle". State practice in the area of continental shelf delimitation has not been so straightforward as Malta would suggest. In many instances the texts of the agreements do not specify the methodology involved in establishing the delimitation. In others, the resulting boundary clearly bears no relation to equidistance, employing other methods instead. In some, equidistance has been modified or particular features enclaved or given partial effect. And in still others, equidistance has been employed, sometimes with explicit confirmation by the parties that it achieves an equitable result under the circumstances of the particular case[4].

5.58 In short, there is no "settled practice" involving the automatic use of the equidistance method. And there is certainly no indication that those States that have employed equidistance in delimiting their continental shelves did so because they felt they were legally obliged to do so by a principle or rule of customary international law. Rather, it may be supposed that the States involved established a particular boundary because they viewed such a boundary as achieving a satisfactory result in the light of all the prevailing circumstances. In the words of the Court's 1969 Judgment—

---

[1] *North Sea Continental Shelf, Judgment, I.C.J. Reports 1969*, p. 43, para. 76.

[2] *Ibid.*, p. 44, para. 77.

[3] *Maltese Memorial*, para. 133(a).

[4] See generally Section C. 2, below, and the *Annex* of delimitation agreements.

> "... the position is simply that in certain cases — not a great number — the States concerned agreed to draw or did draw the boundaries concerned according to the principle of equidistance. There is no evidence that they so acted because they felt legally compelled to draw them in this way by reason of a rule of customary law obliging them to do so — especially considering that they might have been motivated by other obvious factors[1]."

5.59 There is one final aspect regarding the legal relevance of such practice raised repeatedly by the Maltese Memorial that cannot escape comment. This is the assertion, phrased in a variety of ways, that "any solution not predicated upon equidistance would be very likely to lead to a real sense of unease in the international community" and that "international tribunals should avoid any disturbance of generally accepted principles on which the stability of existing delimitations depend[2]". In other words, Malta is asking the Court to decide in favour of the equidistance method in this case because, if it does not, this will somehow disrupt previous agreements that may have employed equidistance in whole or in part.

5.60 To grace such a proposition with the title of an equitable principle or relevant circumstance, as the Maltese Memorial does in paragraph 234, is unconvincing. Surely Malta does not need to be reminded that under Article 59 of the Court's Statute, "[t]he decision of the Court has no binding force except between the parties and in respect of that particular case". Because of the *res judicata* character of the Court's judgment, there is no danger that the decision in the present case would result in the undoing of previous delimitation treaties[1]. To Libya's knowledge, there is no example where States have completely renegotiated their maritime boundaries after this Court rejected the automatic use of equidistance in either its 1969 or 1982 Judgments[2]. Nor did States rush to replot existing boundaries after the Court of Arbitration enclaved the Channel Islands and accorded the Scillies one-half effect in its 1977 Award. If Malta seeks further reassurance on this point, it need only recall the Court's own words so recently articulated in its 1982 Judgment:

---

[1] *North Sea Continental Shelf, Judgment, I.C.J. Reports 1969*, pp. 44-45, para. 78. In this respect the Court followed, by analogy, the views expressed by the Permanent Court in the *Lotus* case where it had observed:

> "Even if the rarity of the judicial decisions to be found ... were sufficient to prove ... the circumstance alleged ... it would merely show that States had often, in practice, abstained from instituting criminal proceedings, and not that they recognized themselves as being obliged to do so; for only if such abstention were based on their being conscious of having a duty to abstain would it be possible to speak of an international custom. The alleged fact does not allow one to infer that States have been conscious of having such a duty; on the other hand, ... there are other circumstances calculated to show that the contrary is true." *P.C.I.J. Series A, No. 10*, 1927, p. 28.

[2] *Maltese Memorial*, paras. 208 and 272(f).

> "Clearly each continental shelf case in dispute should be considered and judged on its own merits, having regard to its peculiar circumstances; therefore, no attempt should be made here to over-conceptualize the application of the principles and rules relating to the continental shelf[3]."

2. Malta's Treatment of State Practice

5.61 The Maltese Memorial has divided up its discussion of State practice in a curious manner. Two categories of practice involving island States appear first in the Maltese Memorial. These are separated from two more sections dealing with island dependencies by a brief recitation of national legislation. The Maltese Memorial then concludes its examination of State practice with a discussion of the Mediterranean. In all, Malta reviews some 29 delimitation agreements and some 17 examples of national legislation. This, in Malta's view, "constitutes as complete a rehearsal of such material as possible[4]".

5.62 At the outset, it is necessary to emphasise that Libya considers the examples of national legislation listed in the Maltese Memorial to be irrelevant. Each of the provisions cited by Malta involves unilaterally enacted legislation. As the Permanent Court observed in commenting on the status of such legislation in its Judgment in the *Certain German Interests in Polish Upper Silesia* case:

---

[1] Malta's reliance on the doctrine of stability and finality in the settlement of boundaries and its citation to the Court's Judgment in the case concerning the *Temple of Preah Vihear, I.C.J. Reports 1962*, p. 6 at p. 34 (see *Maltese Memorial*, paras. 209 and 210 and notes 2 and 3) is misplaced in this context. Libya does not accept that the judgment of this Court in the present case would constitute a "continuously available process" — to use the Court's words in the *Temple* case — by which third States could call into question treaty obligations they had entered into with other States regarding the delimitation of the continental shelf.

[2] It should be noted that on 25 November 1971 the United Kingdom signed separate Protocols with the Netherlands and Denmark altering one point on each of the U.K.-Netherlands and U.K.-Denmark continental shelf boundaries to take into account the agreements those two States had entered into with the Federal Republic of Germany following the Court's Judgment in the *North Sea* cases. (See Nos. 11 and 13 in the *Annex* of delimitation agreements.)

[3] *Continental Shelf (Tunisia/Libyan Arab Jamahiriya), Judgment, I.C.J. Reports 1982*, p. 92, para. 132.

[4] *Maltese Memorial*, para. 195.

56

> "From the standpoint of international law and of the Court which is its organ, municipal laws are merely facts which express the will and constitute the activities of States, in the same manner as do legal decisions or administrative measures[1]."

Thus, the examples of national legislation appearing in the Maltese Memorial are no more than simple facts that are not evidence of an obligation under international law. How they are relevant to the present case has yet to be explained by Malta, particularly when it is noted that of the 17 examples given, 13 concern only fishery or economic zones without reference to the delimitation of the continental shelf. Only one—Malta's 1966 Law—concerns the continental shelf proper, while the remaining three involve both the shelf and economic zone.

5.63 As for the delimitation agreements cited by Malta, in order to place Malta's rather selective use of these agreements in the proper perspective, Libya has decided to present to the Court a detailed, factual analysis of all the examples of existing delimitations known to it. This material, along with maps of the agreements involved, has been placed in an annex so as not to overburden the Counter-Memorial. Libya has not tried to single out some agreements to the exclusion of others for the simple reason that, in Libya's view, every delimitation situation is characterised by its own particular physical setting and its own peculiar facts. As the maps that are included in the *Annex* of delimitation agreements attest, no two delimitations are the same. Indeed, the body of agreements taken as a whole testifies to the wide diversity of factual situations presented by State practice and the correspondingly wide variety of solutions reached to accommodate these situations. Some cases are between States with opposite coasts; some between coasts that are adjacent to each other. Many, in fact, exhibit coastal relationships that are to some extent both opposite and adjacent, making it difficult to classify them as one or the other. Islands appear in a number of contexts and have been treated in a number of different ways. As is brought out by the *Annex*, many islands have been ignored; others have been enclaved or given partial effect; still others have been given full effect. In many instances, it is difficult to tell from the agreement itself, or the map, how a particular island or coastal feature figured in the determination of the ultimate delimitation line. What can be said is that not one of these agreement presents a geographical setting truly analogous to the present case[2].

5.64 Libya does not propose to comment here on each example of State practice cited (or omitted) by Malta. This will be left to the *Annex*.

---

[1] *Certain German Interests in Polish Upper Silesia, Merits, Judgment No. 7, 1926, P.C.I.J., Series A, No. 7*, p. 19.

[2] But see para. 5.75, below.

Nonetheless, Libya has serious misgivings over the manner in which the Maltese Memorial has portrayed many of the examples, at least some of which deserve mention at this stage.

Delimitation Agreements Cited by Malta

5.65 The very first map produced in the Maltese Memorial—depicting the delimitation between Norway and Denmark (the Faroe Islands)—tells a quite different story from that which Malta tries to draw from the agreement[1]. Malta has employed this example in an effort to show that "the relatively small feature constituted by the Faroes generates as much appurtenant shelf as the mainland of Norway[2]." The impression is thus conveyed that a tiny group of islands lying opposite a large mainland receives the same amount of shelf as the mainland, and the implication is clear that Malta believes this situation to be analogous to the setting of the present case.

5.66 But is the entire mainland of Norway really germane to the delimination with the Faroes? Or is it only the very limited promontory on the Norwegian coast lying due east of the Faroes that comes into play? Is this delimitation to be looked at in isolation without regard to delimitations between neighbouring States? South of that promontory it may be seen that the Norwegian coast has nothing to do with the Faroes since it faces the Shetland Islands and Scotland and has thus figured in Norway's delimitation with the United Kingdom[3]. North of that point the Norwegian coast fades away to the east and has no effect on an equidistance line. Indeed, the delimitation line in this instance is in all likelihood governed by a single point on the Norwegian coast. The relevant stretch of Norway's coast might thus be considered to be no longer than that of the Faroes. What is more, the total length of the boundary line is only some 50-60 kilometres long, or *less* than the combined length of the east-facing coasts of the Faroes. For Malta's claim to be analogous, the Maltese proposed line would have to be shorter than the south-facing coast of Malta which, as has been pointed out above, is only about 28 kilometres long[4]. But
⑫ Malta's claim as depicted in Figure A of its Memorial is over 250 kilometres long! Clearly there is no parallel between the two situations.

5.67 If the preceding paragraphs have treated the Denmark-Norway delimitation in some detail, it is only to illustrate the danger involved in over-generalising particular examples of State practice and of drawing hasty conclusions or comparisons from them. Similar comments could be made about many of the examples chosen by Malta. For instance, how much of the coast of Iran may be said to be relevant to its delimitation with Bahrain—a delimitation which in any event is not based exclusively on equidistance[5]. The answer must be very little—given the presence of third States and third State delimitations in the immediate vicinity and the fact that the delimitation line is only 54 kilometres long[6]. It might also be asked, where is the analogy between the geographic setting of the Cuba-Mexico delimitation with the situation between Libya and Malta[7]? In the former case, the delimitation essentially took place between two coastal promontories with similar configurations; in the latter, the delimitation is to occur between a group of very small islands and an extensive coastline[8].

---

[1] The map appears at p. 38 of the *Maltese Memorial*. *Map 8* facing p. 124 portrays this delimitation in the context of neighbouring State delimitations. The discussion of the Denmark (Faroes)-Norway agreement may be found at p. 39, para. 125, of the *Maltese Memorial*.

[2] *Maltese Memorial*, para. 125.

[3] See the Norway-United Kingdom agreement appearing at No. 8 in the *Annex* of delimitation agreements.

[4] See para. 2.34, above.

5.68 In addition to this tendency to compare situations which, factually, simply are not the same, the Maltese Memorial also tends to overlook key aspects of agreements which are unfavourable to Malta's case. The delimitation between the Maldives and India is an excellent example. As in other cases, Malta's discussion of this treaty is very brief. It states only that the boundary approximates a median line and that "much of the Maldives group lies at a considerable distance from the coast of India[9]". The impression the Maltese Memorial tries to convey is that of a group of tiny islands (Maldives) receiving full equidistance in a delimitation with a gigantic mainland State (India). What the Maltese Memorial neglects to point out, however, is that if the equidistance method was employed (and there is no indication in the text of the agreement stating this is so), then most of the delimitation line was governed on the Indian side not by its mainland coast, but by the tiny island of Minicoy lying well out to sea. As *Map 9* makes clear, the India-Maldives boundary lies for the most part between small islands situated on both sides of the line. The only portion of the mainland Indian coast that conceivably could have come into play is the extreme southwestern portion. Yet this stretch of coast is no longer than the coasts of the Maldives that face it.

5.69 Malta's characterisation of the Australia-France (New Caledonia) agreement is even less candid. We are told that "with respect to New Caledonia, the resulting boundary is an equidistance line more than 1200 miles in length which gives full effect to New Caledonia and, additionally, utilises a number of uninhabited reefs as basepoints[1]." Accepting this statement as it stands, the impression created is that the fairly small island of New Caledonia received full equidistance treatment for over 1200 miles against its much larger, continental neighbour, Australia. But the facts are quite different. For the agreement itself makes no mention of equidistance and only indicates that the parties recognised the need "to effect a precise and *equitable* delimitation[2]". Moreover, the delimitation line is not an equidistance line between New Caledonia and the Australian mainland as *Map 10* reveals. If anything, the line is roughly equidistant between a series of minute French islands and reefs lying to the east of the boundary and a series of equally minute Australian islands and reefs lying to the west. As for the southern sector of the line, it does not appear that either New Caledonia or, much less, mainland Australia had any effect at all on the boundary. If the delimitation line is equidistant between anything, it is between Norfolk Island—a small island belonging to Australia—and the tiny reefs lying south of New Caledonia. The contention put forward by the Maltese Memorial that this situation is both "factually" and "legally" comparable to the Libya-Malta setting is clearly incorrect.

---

[5] See the *Maltese Memorial*, para. 185(a), and the *Annex* of delimitation agreements, No. 25.

[6] See *Annex of* delimitation agreements, No. 25.

[7] See the *Maltese Memorial*, para. 185(b), and *Annex* of delimitation agreements, No. 47.

[8] Other examples cited by Malta, but bearing absolutely no physical resemblance to the present case, have been noted at para. 5.53, above. To these might be added the agreement between Indonesia and Singapore which involved a delimitation of the territorial sea and not the continental shelf, and that between the United Kingdom and Venezuela in the Gulf of Paria which, in any event, predated the modern concept of the continental shelf.

[9] *Maltese Memorial*, para 185(c).

5.70 Malta's treatment of the Australia-Indonesia delimitation is also misleading. The Maltese Memorial reports that the Australian-Indonesian boundary "lies between the trijunction point A3 and extends westward to point A16", and that "between points A3 and A12 the line is in accordance with equidistance[3]". These points may be seen on a map of the delimitation (*Map 11*) facing the following page. Libya might well ask what happened to the western segment of the Australia-Indonesia line lying between points A17 and A25 which the Maltese Memorial has preferred to overlook? But there are more significant aspects to this example which deserve to be emphasised first.

5.71 There cannot be found in the text of the agreement any reference to equidistance. However, even if the boundary between points A3 and A12 does approximate a line determined according to the equidistance method, such a boundary must be viewed in the context of the physical characteristics of the area within which the delimitation took place. As *Map 11* shows, the segment of the line joining points A3 and A12 falls between a rather large promontory extending from the north of Australia and the combined coasts of New Guinea (the part belonging to Indonesia) and the Aru Islands. The sea-bed here is shallow and regular with maximum depths of only about 150 metres, and the coasts of the parties are comparable in length. Given these facts, it is not surprising that the States involved arrived at a boundary that does not deviate radically from equidistance.

---

[1] *Maltese Memorial*, para. 191(f).

[2] [Italics added.] See *Annex* of delimitation agreements, No. 71.

[3] *Maltese Memorial*, para. 187(c).

5.72 Further to the west, however, the physical characteristics become quite different. Between points A12 and A16, for example, the delimitation line falls between the relatively small Tanimbar Islands, on the one hand, and the Australian mainland and the more sizeable Melville Island, on the other. Not only is the portion of the Australian coast facing this area longer than that of Indonesia; the sea-bed morphology also begins to change. Just south of the Tanimbar Islands the sea-bed plunges rapidly into a depression — vividly depicted by the bathymetric contours on the accompanying map — known as the Timor Trough. As close as 10-15 miles from the Tanimbar coast the sea-bed reaches depths of 1500 metres. Further west, below the Sermata Islands, these depths increase to some 2000 to 3000 metres.

5.73 As might be expected, the delimitation line in this sector bears no relationship to a median line. The boundary falls substantially closer to Indonesian than to Australian territory, and there is clear evidence that the parties took into account both geomorphology and petroleum activities in negotiating this line[1].

5.74 As for the segment of the Australia-Indonesia delimitation ignored by the Maltese Memorial (between points A17 and A25), it too deviates sharply from equidistance. Again, the geomorphology of the area appears to have played an important role in the delimitation owing to the presence of the Timor Trough, just south of Timor, which reaches depths of between 2000 and 3000 metres.

5.75 As a result, for well over half of its distance, the Australia-Indonesia delimitation utilises a method of delimitation that has no relation to equidistance. Geomorphology undoubtedly affected significantly the overall solution. Thus, if any example of State practice cited by Malta bears a similarity to the setting within which the Libya-Malta delimitation is to occur, it is that portion of the Australia-Indonesia boundary falling between the Australian mainland on the one hand, and the smaller Indonesian islands on the other. And yet the Maltese Memorial has dismissed this example with a single sentence stating: "Westward of a point A12 the alignment is a negotiated boundary[2]."

Delimitation Agreements in the Mediterranean[3]

5.76 It is apparent that Malta attaches importance to delimitation agreements in the Mediterranean since the Maltese Memorial devotes a separate section to this region. It is there stated that "the practice of coastal States of the region provides significant indicators as to the proper basis of an equitable solution in the present proceedings[4]". Libya rejects such a proposition. For if the achievement of an equitable result in any particular case depends on the proper balancing of the relevant circumstances of that case, how does a solution reached in a delimitation between two third States — involving as it inevitably must a different set of relevant factors — provide any "significant indicators" as to what is equitable as between Libya and Malta? Nonetheless, since Malta has singled out State practice in the Mediterranean, it is necessary to examine these agreements one by one even though they represent a small fraction of the total number of delimitations remaining to be agreed in the Mediterranean[1].

---

[1] See the *Libyan Memorial*, para. 6.48 and fn. 1 at p. 100.

[2] *Maltese Memorial*, para. 187(c).

[3] A map of the Mediterranean depicting existing delimitation boundaries has been included in the pocket section of Vol. III of this Counter-Memorial.

[4] *Maltese Memorial*, para. 200.

Italy - Yugoslavia

5.77 The Agreement signed between Italy and Yugoslavia on 8 January 1968 is the first example of Mediterranean practice discussed by Malta. *Map 12* reveals that these two States enjoy long stretches of coast running roughly parallel to each other along virtually the entire length of the Adriatic Sea. It also shows that, with the exception of the area around the southernmost sector of the delimitation line, the sea-bed is shallow and relatively featureless. Can this area really be described as a situation "like and comparable[2]" to that between Libya and Malta? If Libya is to be compared with Yugoslavia in this example, does Malta resemble Italy? Or is the comparison the other way around, with Malta to be compared with Yugoslavia and Libya with Italy? Similarly, is the sea-bed in the two cases really the same? Or is Malta's position perhaps more akin to the small Yugoslav Islands of Pelagruza and Kajola which received 12 mile enclaves under the terms of the agreement[3]?

Italy - Tunisia

5.78 The Italy-Tunisia Agreement[4] is another example which Libya fails to see as presenting a "like and comparable situation" to the Libya-Malta setting. If the coasts of the landmasses involved in the Italy-Tunisia example are examined, it will be seen that the Tunisian coast relevant to the delimitation — that is, from the Algerian border roughly to Ras Kaboudia — is approximately the same in length as the combined south-facing coasts of Sardinia and Sicily. Once again Libya would ask: does

---

[1] One commentator has observed that at least 32 boundaries would be necessary to complete the Mediterranean delimitation. See BASTIANELLI, F., "Boundary Delimitation in the Mediterranean Sea", *Marine Policy Reports*, Vol. 5, No. 4., 1983, pp. 1-6 at p. 3.

[2] *Maltese Memorial*, para. 184. This Agreement is dealt with in the *Annex* of delimitation agreements, No. 14.

[3] It is of interest to note how these two States, which had actively supported the equidistance formula during the Third Conference on the Law of the Sea, abandoned equidistance with respect to these islands. In fact, equidistance is not even mentioned in the text of the agreement.

[4] See the *Annex* of delimitation agreements, No. 26. This delimitation is portrayed on *Map 13*.

Malta cast itself in the role of Tunisia or Italy in this delimitation? Can the coasts of Italy and Tunisia realistically be considered comparable to those of Malta and Libya?

5.79 Of course, the more significant aspect of the Italy-Tunisia delimitation lies in the treatment accorded to the Italian islands of Pantelleria, Lampedusa, Linosa and Lampione. Even though they lie "opposite" the Tunisian mainland, none of them received full effect under the equidistance method. Each was accorded either a 13 or, in the case of Lampione, a 12-mile band of territorial waters and continental shelf, instead. In fact, the partial enclaves established around the Italian islands have the effect of causing more than half of the overall delimitation line to deviate from equidistance.

5.80 Finally, Libya questions Malta's assertion that the Italy-Tunisia agreement, as well as all of the agreements cited in the Maltese Memorial, concern States on the "same shelf". This claim is made in at least two different places in the Maltese Memorial[1], and although the Maltese Memorial does not clarify just what is meant by this term, it does not offer any evidence that this is so. The Italy-Tunisia agreement provides an example in point. As can be seen from *Map 13* facing this page, Italy and Tunisia do not abut on the same continental shelf, at least in the physical sense. Indeed, this fact was noted during the intervention proceedings in the *Tunisia/Libya* case when discussions between Italy and Malta were revealed in which it was asserted that the Pelagian Islands rested on "the extension seawards of the Tunisian landmass[2]."

Italy - Spain[3]

5.81 Malta's treatment of the agreement between Italy and Spain is very brief indeed. As *Map 14* illustrates, the delimitation line falls between Sardinia on the one hand and the Balearic Islands on the other. No extensive mainland coast is involved on either side, making it difficult to perceive how this example of State practice presents a situation "like and comparable" to that between Libya and Malta.

5.82 If reference is made once again to *Map 14*, it will also be seen that the sea-bed between Sardinia and the Balearics has quite different characteristics from the sea-bed between Libya and Malta. In the former case, the bathymetric contours indicate a relatively featureless plain with no marked discontinuities lying between the two groups of islands; in the latter, the bathymetry shows a series of troughs and channels passing south of Malta[1].

---

[1] See *Maltese Memorial*, paras. 185 and 198.

[2] Libya questions whether a number of the examples given by Malta may accurately be said to involve States on the "same shelf". For example, do Australia and Indonesia rest on the same shelf (*Maltese Memorial*, p. 75; *Annex* of delimitation agreements, No. 24)? Similarly, do Cuba and the United States (*Maltese Memorial*, p. 67; *Annex* of delimitation agreements, No. 53); the Cook Islands and American Samoa (*Maltese Memorial*, p. 91; *Annex* of delimitation agreements, No. 66); New Caledonia and Australia (*Maltese Memorial*, p. 94; *Annex* of delimitation agreements, No. 71); or Venezuela and either the Dominican Republic or Puerto Rico (*Maltese Memorial*, pp. 70 and 83; *Annex* of delimitation agreements, Nos. 61 and 56) rest on the same shelf ?

[3] See *Annex* of delimitation agreements, No. 36.

5.83 There is one aspect of the Italy-Spain delimitation which might be considered to be common to the Libya-Malta situation. This is the question of the presence of third States. The Italy-Spain agreement specifically leaves open the final determination of the northern and southern terminal points on the line, presumably because delimitations involving Algeria and France have yet to be established. Similarly, the delimitation in the present case will have to take into account existing or potential delimitations.

Italy - Greece

5.84 The final Mediterranean delimitation mentioned in the Maltese Memorial involves the agreement signed by Italy and Greece on 24 May 1977. A map depicting the course of this delimitation line may be found in the *Annex* of delimitation agreements, No. 51[2]. This map illustrates how neither the coastal relationship nor the sea-bed between Italy and Greece is in any way similar to the situation between Libya and Malta. In the former case, the delimitation line — which as Malta points out is based on equidistance — delimits areas between coasts of roughly equal length. Moreover, there are no noticeable geomorphological discontinuities in the area which might otherwise have affected the line[3]. In the present case, the physical characteristics are quite different.

5.85 Given the geographical and geomorphological setting of the Italy-Greece delimitation, it is not surprising that equidistance was employed, particularly when it is recalled that both Italy and Greece supported the equidistance formula as a general rule of delimitation (and co-sponsored Document NG7/2 in this respect) during the discussions at the Third Conference on the Law of the Sea.

Italy - Malta (Provisional Solution)

5.86 The Maltese Memorial has also mentioned the provisional arrangement between Malta and Italy involving the area lying between Malta and Sicily. From the exchange of notes between the two States, it is unclear precisely how far the provisional demarcation extends. If reference is made, however, to Italy's Note Verbale to Malta dated 29 April 1970, it may be surmised that the arrangement is quite limited in scope, confined to the area "between the northern coasts of Malta and the opposite Sicilian coasts[1]". This area, it may be recalled, corresponds to the very shallow area of sea-bed lying on the Ragusa-Malta Plateau which is visible on *Map 4* facing page 48. It is an area that is hardly comparable to the sea-bed lying between Malta and Libya.

---

[1] It may also be noted that both Italy and Spain were supporters of the equidistance formula for delimitation and co-sponsors of Document NG 7/2 at the Third Conference on the Law of the Sea (attached as *Documentary Annex 33*). According to one Spanish authority, neither side presented any reservations or objections to the use of the equidistance method in this case.

[2] Maps of the Italy-Greece delimitation also appear facing pages 148 and 150 of the *Libyan Memorial*. A discussion of this agreement may be found at paras. 9.46-9.49 of the *Libyan Memorial*.

[3] Libya questions, however, whether Italy and Greece may be said to abut on the same shelf in the physical sense as the *Maltese Memorial* implies.

5.87 In Libya's view, each example of State practice in the Mediterranean — and, indeed, every example cited in the Maltese Memorial — can be distinguished from the physical setting of the present case. The examination of delimitation agreements contained in the *Annex* of delimitation agreements further demonstrates the differences in all the agreements. At this stage, therefore, it is not felt necessary to comment on all of the remaining examples cited by Malta. What do deserve comment, however, are some of the agreements Malta has chosen not to discuss, for these serve to illustrate the selective nature of Malta's reliance on State practice.

Delimitation Agreements Omitted from Malta's Memorial

5.88 The selective nature of Malta's handling of delimitation agreements may best be illustrated by examining some of the agreements Malta has elected to ignore. A number of examples come to mind. These include the western sector of the Australia-Indonesia agreement passed over by Malta and discussed above[2]. Another striking omission is the lack of any reference to the agreement between the Netherlands and Venezuela regarding the Dutch Antilles[3]. This agreement hardly fits the Maltese thesis that equidistance is a "principle" of delimitation regarding opposite coasts or islands. Its Preamble states that the delimitation is "based on equitable principles" and the resulting boundary is not an equidistance line. Instead, the parties established a wedge-shaped area of shelf for the Dutch Antilles which accorded the islands less than half the area they would otherwise have received had the equidistance method been employed[4].

5.89 Another curious omission is the agreement between Japan and the Republic of Korea. The agreement itself does not specify the methodology used in arriving at the boundary. The northern sector, however, does fall more or less equidistant from the territory of each State. As *Map 15* shows, this sector delimits areas between stretches of coasts of the parties which are roughly the same in length. In contrast, the southern sector of the delimitation deviates sharply from equidistance. It is characterised by a large joint development zone that falls almost exclusively on the Japanese side of what would otherwise be a median line between the parties. There is room for speculation as to why this result was agreed upon. At least one source has noted that during negotiations Japan based its claim on the median line theory while Korea invoked the "natural extension" or natural prolongation approach[1]. This would accord with the geomorphology of the region which, as *Map 15* shows, deepens quickly off the Japanese coast in the south while it remains shallow for a considerable distance off the Korean coast.

---

[1] See Annex 66 to the *Maltese Memorial*.

[2] See paras. 5.70-5.75, above.

[3] For the text and a map of this agreement see the *Annex* of delimitation agreements, No. 57.

[4] In the very narrow segment between the Dutch Islands and the Venezuelan mainland the line does not deviate substantially from equidistance. The map in the *Annex* of delimitation agreements, No. 57, shows the limited distances involved.

5.90 Nor does the Maltese Memorial address itself to the recent agreement between Iceland and Norway concerning the Norwegian Island of Jan Mayen[2]. In that case Iceland — much the larger of the two islands — received a continental shelf boundary co-extensive with its 200-mile economic zone despite the fact that the distance between the two islands is only 290 nautical miles. The agreement also provides for a joint development zone, approximately three-fourths of which falls on Jan Mayen's side of the continental shelf boundary.

5.91 In addition, many examples of delimitations which involve the allocation of a partial effect to, or the enclaving of, islands are absent from the Maltese Memorial. The agreement between Saudi Arabia and Iran which involved giving one-half effect to the Iranian Island of Kharg[3] and partially enclaving two other islands is passed over by Malta. Nor does the Maltese Memorial refer to other Gulf delimitations — including the Iran-United Arab Emirates (Dubai)[4] and Iran-Oman[5] agreements in both of which small islands were partially enclaved.

5.92 It must be emphasised that these omissions involve States that might generally be classified as having opposite coasts. The Maltese Memorial has also omitted a discussion of delimitations involving States with adjacent coasts[6]. As Section B of this Chapter has shown, such a distinction lacks validity. Geographic situations are seldom simple. It is not easy to draw a sharp distinction between delimitations involving opposite coasts and those involving adjacent coasts. Each case must be examined on its facts.

---

[1] "Continental Shelf Development", *Japan Quarterly*, Vol. XXIV, No. 4, 1977, pp. 394-397 at p. 394. See *Libyan Memorial*, Annex 95. For the text of this agreement see the *Annex* of delimitation agreements, No. 35.

[2] See No. 70 in the *Annex* of delimitation agreements.

[3] Kharg is an extremely important island to Iran since it is where the majority of Iran's oil exporting activity and tanker loading takes place.

[4] See the *Annex* of delimitation agreements, No. 42.

[5] *Ibid.*, No. 40.

[6] The Italy-Yugoslavia and Australia-Indonesia agreements may, however, be regarded as involving adjacent coasts for a limited portion of the delimitation.

5.93 The continental shelf delimitation between France and Spain provides a good example[1]. As *Map 16* reveals, over its initial segment—from the point at which the land frontier between the parties reaches the coast—the delimitation is between two coasts which are adjacent to each other along the easternmost part of the Bay of Biscay. As the boundary proceeds seaward, however, it becomes increasingly apparent that it no longer delimits an area between adjacent coasts, but rather constitutes a boundary between opposite coasts, namely between the north coast of Spain and the south coast of Brittany. Contrary to what might be expected from the Maltese thesis, it is the initial segment of the continental shelf boundary between the "adjacent" portions of the French and Spanish coasts that is based on equidistance. The seaward segment of the line between the "opposite" portions of the coasts (from Point R to Point T on the map) deviates from equidistance and appears to have been based on proportionality between the lengths of the French and Spanish coasts instead[2].

5.94 The continental shelf boundary between the United States and Mexico in the Gulf of Mexico is similar[3]. Along the portion of the line lying closest to the land frontier between the two States, the boundary follows an equidistance line. Further out in the Gulf, however, the line may be seen to fall closer to the United States than to Mexico[4].

5.95 Another example of this tendency is found in the boundary between Colombia and Panama[5]. Close in to the adjacent mainland coasts of Colombia and Panama the boundary is an equidistance line. Further out in the Caribbean, however, the line delimits the areas between the coasts of certain Colombian islands and of mainland Panama which bear more of an opposite relation to each other. It is in this seaward sector that the delimitation abandons equidistance and assumes a step-like configuration following lines of latitude and longitude instead.

5.96 Viewed as a whole, therefore, State practice does not support Malta's contention that there exists a "principle" whereby States with opposite coasts automatically delimit their continental shelf boundaries by means of the equidistance method, although equidistance may have been employed where it leads to an equitable result. Nor does it support the Maltese claim that islands are entitled to a "median line delimitation" whenever they are in an "opposite" relationship. Many examples of State practice are not easily classified as either between strictly "adjacent" or "opposite" States. Indeed, the jurisprudence and conventional law appear to recognise the hazards involved in drawing too fine a line between the two situations. This is because many different methods are available for establishing a delimitation[1]. If State practice demonstrates anything therefore, it is that each case has its own unique setting and own peculiar facts. As the former Geographer to the United States Department of State has observed, "every maritime-boundary situation is geographically unique[2]". Consequently, States have resorted to a wide variety of solutions to ensure that they reach a satisfactory result in each particular case.

---

[1] The text of this agreement appears at the *Annex* of delimitation agreements, No. 34.

[2] See the *Annex* of delimitation agreements, No. 34. There is a suggestion that geomorphology may also have played a role in this delimitation inasmuch as the portion of the line linking points R and T is virtually half-way between the bathymetric isobaths measured at equal depths. See DE AZCARRAGA, J.L., "España Suscribe, con Francia e Italia, Dos Convenios Sobre Delimitacion de sus Plataformas Submarinas Comunes", *Revista española de derecho internacionál*, Vol. XVII, p. 132. A copy of this page is attached as *Documentary Annex 37*.

[3] See the *Annex* of delimitation agreements, No. 23.

[4] The United States' position with respect to its delimitation with Mexico, as well as with all of its delimitations, is that such agreements are to be concluded in accordance with equitable principles. See FELDMAN, M.B. AND COLSON, D., "The Maritime Boundaries of the United States", *American Journal of International Law*, Vol. 75, 1981, pp. 729-763 at p. 742. A copy of this page is attached in *Documentary Annex 38*.

[5] See the *Annex* of delimitation agreements, No. 48.

5.97 In addition, it should be noted that many delimitations remain to be established throughout the world. One estimate is that over 300 potential delimitation situations exist[2], each with its own particular characteristics. Reference to these, as yet unresolved, delimitations as well as to the broad diversity of agreements that have already taken place hardly supports the Maltese contention that examples of State practice provide "an objective reflection[3]" of a result that would necessarily be equitable in the present case.

---

[1] It is useful to bear in mind that equidistance, being a mechanical method, may often be the simplest method to apply. As has been noted by two experts: "... it is not surprising that in U.S. and international practice the maritime boundaries easiest to settle are frequently delimited with reference to the equidistance method. More complex or disputed boundaries are generally settled or decided by giving effect to other methodologies". FELDMAN AND COLSON, *op. cit.*, pp. 749-750. A copy of these pages is attached in *Documentary Annex 38*.

[2] HODGSON, R. D. AND SMITH, R. W., "Boundary Issues Created by Extended National Marine Jurisdiction", *The Geographical Review*, Vol. 69, No. 4, Oct. 1979, pp. 423-433 at p. 426. A copy of this page is attached in *Documentary Annex 39*.

[3] *Maltese Memorial*, para. 184.

PART III

APPLICATION OF THE LAW TO THE FACTS AND RELEVANT CIRCUMSTANCES OF THE PRESENT CASE

CHAPTER 6

THE OVERRIDING AIM OF ACHIEVING AN EQUITABLE RESULT IN ACCORDANCE WITH EQUITABLE PRINCIPLES

A. The Selection and Weighing of the Relevant Circumstances

6.01 It is clear that the principles and rules of international law regarding continental shelf delimitation must be applied to any particular case in a manner that is responsive to the facts and relevant circumstances of that case. There is, accordingly, no one method of delimitation that must be rigidly applied in every case[1]. In the words of the Court in its Judgment in the *Tunisia/Libya* case:

> "It is clear that what is reasonable and equitable in any given case must depend on its particular circumstances. There can be no doubt that it is virtually impossible to achieve an equitable solution in any delimitation without taking into account the particular relevant circumstances of the area[2]".

In its 1977 Award, the Court of Arbitration shared the Court's view, as expressed in its 1969 Judgment, concerning the relationship between achieving an equitable solution and the appropriate account to be taken of the relevant circumstances, when it linked the appropriateness of any method "for the purpose of effecting an equitable delimitation" to the "reflection of the geographical and other relevant circumstances of each particular case[3]".

6.02 The process of arriving at an equitable result through the selection and weighing of the relevant circumstances in any particular case was expressed this way in the Libyan Memorial[4]:

> "The cardinal feature of continental shelf delimitations is that a Court is faced with complex situations of fact — with no one situation directly comparable to another — and the facts (or "relevant circumstances") have an importance such that they determine the outcome of the case. The task of the Court therefore lies more in identifying and balancing, or weighing, the various facts or factors relevant to the case than in formulating abstract principles."

---

[1] This Court, in both its 1969 and 1982 Judgments, has recognised that there is no *a priori* method of delimitation, but that "several methods may be applied to one and the same delimitation". *North Sea Continental Shelf, Judgment, I.C.J. Reports 1969*, p. 53, para. 101(B) [*dispositif*].

[2] *Continental Shelf (Tunisia/Libyan Arab Jamahiriya), Judgment, I.C.J. Reports 1982*, p. 60, para. 72.

[3] *Anglo-French Arbitration, Decision of 30 June 1977* (Cmnd. 7438), p. 59, para. 97.

[4] *Libyan Memorial*, para. 6.38. It seems evident that the selection and weighing of relevant circumstances necessarily play a greater role in the process of delimitation in cases which have been referred to the Court, as the present case, where no quick and simple solution could be agreed upon between the Parties.

It is almost as if the pleading of Malta had been anticipated in this paragraph of the Libyan Memorial, for the Maltese Memorial resorted in large part to the formulation of abstract principles and avoided identifying and weighing the facts that constitute the relevant circumstance of the present case. Instead, Malta introduced a series of considerations that must be regarded as irrelevant to a continental shelf delimitation. These points have been amply covered in Chapters 2 and 3 above, where the jurisprudence of this Court bearing on the importance in any continental shelf delimitation of the selection and weighing of the relevant circumstances of each case was also cited[1].

6.03 In effect, two operations are involved: the selection of the circumstances relevant to the particular case; and the balancing or weighing of these circumstances. The end result to be achieved is an equitable result.

6.04 Looking first at the selection process, it is apparent that no automatic rule or method emerges from the jurisprudence. Each case must be examined in the light of its "particular circumstances[2]". It is evident, as well, that in continental shelf delimitation such factors or circumstances must be related to the continental shelf and its delimitation. This, of course, is a basic defect in the economic and other considerations introduced by Malta: they are not relevant to continental shelf delimitation. However, there is no closed list or "legal limit[3]" to the considerations that might in a given case be regarded as relevant, provided they are germane to continental shelf delimitation. Hence the process of selection involves an examination of the particular facts of the case actually before the Court to identify those which are relevant to delimitation of the continental shelf.

6.05 The balancing or weighing of the relevant circumstances of a particular case so selected must be undertaken in the light of the overriding objective of achieving an equitable result. In the present case it is evident that a certain hierarchy of factors or circumstances exists. Some factors may be viewed as having more weight than others. Prime weight must be given to those factors of a physical nature that form the basis of continental shelf entitlement, that is the natural prolongation or extension of the land territory of each of the Parties into and under the sea. The continental shelf, after all, comprises the sea-bed and subsoil, and rights to the continental shelf rest exclusively with the coastal State. These physical factors include the coasts of the Parties — properly identified as the relevant coasts — and the characteristics of the sea-bed and subsoil of the areas of continental shelf appurtenant to these coasts. In this respect, the lengths, configurations and relationships of the respective coasts of the Parties are of particular importance. So also are any features of the sea-bed or subsoil that might affect the entitlement of the Parties such as features that constitute fundamental discontinuities in the shelf. If, as in the present case, such physical features are unusual and striking, their weight must be greater, and they necessarily must figure more prominently, in any delimitation than would factors of a trivial character. Such is the case here with regard to the unusual sea-bed features and geographical relationships that have been discussed in Chapter 2 above. Physical factors have another characteristic that contrasts with the economic and political considerations advanced by Malta — they may be objectively determined and observed and, in relative terms, are not subject to change.

---

[1] See paras 2.03 and 2.04 above. See also *Libyan Memorial*, paras. 6.35-6.43.

[2] *Continental Shelf (Tunisia/Libyan Arab Jamahiriya), Judgment, I.C.J. Reports 1982*, p. 60, para. 72.

[3] *North Sea Continental Shelf, Judgment, I.C.J. Reports 1969*, p. 50, para. 93.

6.06 Other factors of a somewhat different nature may also constitute relevant circumstances in a particular case. In this case, for example, the general geographical setting is highly relevant in view of the characteristics of the Mediterranean as a narrow sea, itself comprised of a series of semi-enclosed seas and filled with islands of many different sizes — some independent, others island dependencies — and encircled by continental States. Another relevant aspect of the Mediterranean Sea, and in particular of the setting of the present case in the Central Mediterranean, is the fact that there are both existing and potential continental shelf delimitations in the area that need to be taken into account in a delimitation between Libya and Malta.

6.07 It may be observed that the physical factors of geography, geomorphology and geology will always be relevant circumstances in a case of continental shelf delimitation. So also will the general geographical setting and the presence of any third States that might be affected by the delimitation in question. However, there are other factors which in a given case may also be relevant—or even determinant—in reaching an equitable result. For example, the conduct of the Parties may prove to be of major importance. The Court in the *Tunisia/Libya* case found a "circumstance related to the conduct of the Parties" to be "highly relevant". This was the *de facto* line dividing concession areas at a bearing of approximately 26° to the meridian[1]. It has been shown in Chapter 1 above that in the present case, in spite of efforts in the Maltese Memorial to establish a *status quo*, the only conduct of the Parties that might truly be regarded as a relevant circumstance was the observance by both Parties of an area between the lines proposed by the Parties in 1972 and 1973 in which no drilling in fact occurred until the 1980 Texaco-Saipem incident. The conduct of the Parties in this respect prior to 1980 was reflected in the no-drilling understanding between them which accompanied the signature of the Special Agreement in 1976.

---

[1] *Continental Shelf (Tunisia/Libyan Arab Jamahiriya), Judgment, I.C.J. Reports 1982*, pp. 83-85, paras. 117-120.

6.08 Other factors which in a given case might prove to be relevant, although perhaps in a subsidiary role, include security considerations, navigation channels, historic rights involving resources of the continental shelf or any other existing patterns of exploitation of shelf resources. The fact that in the present case none of these factors have been established by Malta to be relevant to an equitable delimitation has been dealt with in Chapter 3 above.

6.09 The weighing or balancing of the relevant circumstances, just as their selection, is conditioned by the overriding need to reach an equitable result. The primary means for determining the equitableness of a particular result is by the test of proportionality. It is to this subject, therefore, that the discussion now turns.

B. The Test of Proportionality

1. Malta's Attempt to Discredit the Role of Proportionality

6.10 The rejection of proportionality is crucial to the Maltese case. It is therefore important to examine carefully the reasoning behind this rejection. The Maltese argument begins with a simple assertion: "The *location and relation of coastlines* are the overriding factors[1]." The clear implication is that coastal lengths are irrelevant. Why, it may be asked, is this so? The answer given by Malta is that there are two elements of particular relevance:

> "(a) The fact that a restricted coastal sector may produce a number of very influential controlling points by reason of its location and character: and such is the case of Malta.
>
> (b) The fact that the effect of the difference between the west-east or lateral reach of the Maltese and Libyan coastlines leaves Libya with a very large part of the shelf area dividing Malta and Libya[2]."

6.11 Taking these two elements in turn, what evidence is there that the *number* of controlling points (*i.e.*, controlling the median line) has ever been considered relevant? No authority is cited, and, indeed, none can be cited for this strange proposition. After all, a perfectly straight coast has an infinite number of controlling points. But what difference does this make? The proposition is essentially meaningless. As to the second element, all this is saying is that if Libya has more coast it will get more shelf. But of course! This is precisely why coastal lengths are relevant, and the rather trite observation contained in this second "element" is no support whatsoever for the premises of the Maltese argument. Thus, it may fairly be said that, so far, the Maltese argument has got precisely nowhere.

---

[1] *Maltese Memorial*, para. 127.

[2] *Ibid.*, para. 128.

6.12 Yet there is more. For these two elements give rise to a deduction in the following terms—

> "... it follows that the criterion of proportionality (by reference to the length of the respective coastlines) cannot be applied if an equitable solution is to be achieved[1]."

6.13 Of course nothing of the sort follows: indeed, it is not possible for anything to "follow" from two rather meaningless statements graced by the title of "elements". What might fairly be said is that the second "element" is in fact a recognition of the fact that a longer coast will generate more shelf, so this disproves rather than proves the supposed deduction or conclusion.

6.14 Then there is a statement which seems to stand independently of the previous "reasoning". It is to the effect that to take account of coastal lengths would be inconsistent with legal principle "since it would involve a simple apportionment of the continental shelf", contrary to the concept of legal title *ipso facto* and *ab initio*: it would revert to the discarded notion of the "just and equitable share".

6.15 This statement is at variance with the jurisprudence and seemingly with the State practice. Under most normal circumstances the length of any median line is directly dependent on the length of the two coasts controlling it. Even with an equitable or "adjusted" equidistance line, between adjacent States, the differences in coastal length may cause a diversion in that line (as with the Franco-Spanish Agreement of 1974[2]). And when Courts have referred to "coastal configurations" they have had in mind not simply shape but length: in the *North Sea* cases of 1969 the *Anglo-French Arbitration* of 1977 and the *Tunisia/Libya* case of 1982 the length of coast was always a relevant factor. At no stage was a Court prepared to concede that length was irrelevant, or that to take account of length would be to fall into the trap of apportioning "just and equitable shares".

6.16 Later in the Memorial, in Chapter IX, the Maltese argument resumes the discussion of the "irrelevance of proportionality in this case", and the argument takes a rather different form. It begins with the Court's dictum in its 1982 Judgment that "the only absolute requirement of equity is that one should compare like with like[3]." The argument then seems to be that, in dealing with like (or similar) coasts, equity will use proportionality to abate "minor causes of distortion" but cannot refashion nature. And — or so the argument implies — proportionality cannot be used in this case because Malta and Libya are not alike, and there are no minor causes of distortion. To cast this interpretation on the Court's language is unacceptable. The Court was not saying that where coasts are unalike, proportionality has no role. For example, the Court recognised the need, in the *Tunisia/Libya* case, to consider maritime areas up to the coast of both parties without regard to baselines which one or the other party may have enacted and which might have been considered controversial so as to compare "like with like". But the Court in the *Tunisia/Libya* case did not regard the Tunisian coast "like" that of Libya. Moreover, in the *North Sea* cases the Court certainly did not consider the German coast "like" that of the Netherlands or Denmark. Yet in both cases the Court made use of the proportionality test.

---

[1] *Maltese Memorial*, para. 129.

[2] Agreement of 29 January 1974. See the *Annex* of delimitation agreements, No. 34.

[3] Cited at *Maltese Memorial*, para. 257; the dictum appears in *Continental Shelf (Tunisia/Libyan Arab Jamahiriya), Judgment, I.C.J. Reports 1982*, p. 76, para. 104.

6.17 There then follows what is really a quite separate assertion, and that is that "the factor of proportionality is inapplicable in the case of opposite States[1]". This is described as "a matter both of legal principle and the legal policy of promoting stability in delimitation[1]". Quite what the reference to "promoting stability in delimitation" means is not clear. Perhaps the idea is that if States use the median line the answer is simple and predictable, but if account has to be taken of proportionality, then the result is not quite so predictable. That, of course, is true. Yet both Courts and States have rejected the automatic application of equidistance in favour of an equitable result, and they have opted for fairness rather than predictability.

6.18 However, the important statement is the statement of legal principle that proportionality is inapplicable between opposite States. This is asserted to be supported both by "the practice of States and by doctrine[1]", though the Memorial in fact cites no State practice and only one author[2]. It cannot be accepted as a correct statement of legal principle.

6.19 The true position is that with States with opposite coasts, *if one assumes equal coasts*, the median line will constitute an equal division of the area lying between the two coasts[3]. The "proportionality" is, as it were, automatically brought about by the median line method, and Courts have no need to apply the "test" of proportionality because the proportionate result is self-evident. The situation does not require an actual "test" — just as no one would nowadays "test" whether a line joining the bisectors of two opposite sides of a quadrilateral actually divided the quadrilateral equally.

6.20 Thus, in the *Anglo-French Arbitration* (the only case dealing with a clearly "opposite" relationship) the Court stated this proposition—

---

[1] *Maltese Memorial*, para. 258.

[2] The author is BOWETT, *The Legal Régime of Islands in International Law*, Oceana Publications, Dobbs Ferry, New York, 1979, p. 164. But see pp. 224-225 where the same author discusses the Court of Arbitration's use of proportionality between the opposite English and French coasts. A copy of these pages is attached in *Documentary Annex 40*.

[3] This point is discussed at para. 7.24, below and demonstrated in *Diagram A* facing p. 160.

> "... where the coastlines of two opposite States are themselves approximately equal in their relation to the continental shelf not only should the boundary in normal circumstances be the median line but the areas of shelf left to each Party on either side of the median line should be broadly equal or at least broadly comparable[1]."

6.21 Obviously, with adjacent States account has to be taken of the likelihood that any distorting feature will tend to have greater influence on an equidistance line, because it will tend to control a greater length of that line. It is for this reason that the need to apply the "test" of proportionality will be greater[2]. Yet this is not because of any difference in legal principle; legally, the test is relevant in both cases. The difference is simply that with equal, opposite coasts the proportionality is self-evident, but with adjacent coasts it may not be so self-evident and may need to be tested.

6.22 If the opposite coasts are not equal, then the whole assumption of an automatic equality in the division of the area by the median line disappears, and proportionality as a test ought to be applied precisely because the equity of the median line is no longer self-evident. Moreover, if some method other than the median line is used between States with opposite coasts then, irrespective of the equality or lack of equality between the coastal lengths, there is again a need to use the test of proportionality.

6.23 This view receives confirmation from the 1982 *Tunisia/Libya* Judgment. The Court's characterisation of the relationship of the two coasts in the second sector was not in terms of adjacent coasts. On the contrary, the Court said:

> "The major change in direction undergone by the coast of Tunisia seems to the Court to go some way, though not the whole way, towards transforming the relationship of Libya and Tunisia from that of adjacent States to that of opposite States ...[3]".

6.24 Yet, in dealing with a situation more akin to an opposite than an adjacent relationship, the Court had no hesitation in applying the proportionality test[4]. This would seem to be a conclusive rejection of the Maltese thesis of the inapplicability of the proportionality test between opposite coasts.

---

[1] *Anglo-French Arbitration, Decision of 30 June 1977* (Cmnd. 7438), p. 89, para. 182.

[2] Hence the Court of Arbitration used the test in relation to the Scillies, for in the Atlantic Sector the boundary assumed the character of a boundary between laterally-related (or adjacent) coasts: *Anglo-French Arbitration, Decision of 30 June 1977* (Cmnd. 7438), pp. 112, para. 239 and p. 117, para. 250.

[3] *Continental Shelf (Tunisia/Libyan Arab Jamahiriya), Judgment, I.C.J. Reports 1982*, p. 88, para. 126.

[4] *Ibid.*, p. 91, para. 131.

2. The Role of Proportionality

6.25 In contrast with Malta's attempt to discredit proportionality, and to reject its application in the case of opposite States, the Libyan Memorial[1] attempted to place the test of proportionality in an important and general role. For, in Libya's view, the jurisprudence clearly supports the idea of the use of proportionality as a general test of the equity of the result: and, as an aspect of equity, it cannot be right to confine it to situations of adjacency. Equity needs to be satisfied in the case of States with opposite coasts just as much as in the case of adjacent States.

6.26 In the *North Sea* cases the Court saw the role of proportionality as inherent in the idea of an equitable result. Directly related to the concept of title to the area of natural prolongation of the coast was the need, in equity, to secure a realistic assessment of the length of the relevant coast. In the Court's words, the coasts were to be "measured according to their general direction in order to establish the necessary balance between States with straight, and those with markedly concave or convex coasts, or to reduce very irregular coastlines to their truer proportions[2]." Once the coastal lengths had been assessed by this method — the method of "coastal fronts" — the Court saw the need, in equity, to ensure that there should be a "reasonable degree of proportionality ... between the extent of the continental shelf appertaining to the States concerned and the lengths of their respective coastlines[2]". Thus, this was envisaged by the Court as an inherent part of a "delimitation effected according to equitable principles". There is no suggestion that it is to be confined to adjacent States; on the contrary, the test is one of general application. Clearly length was relevant: the Court referred explicitly to "the lengths of their respective coastlines". And, equally clearly, the exercise of applying this test—of taking account of the "factor" — was in no sense regarded by the Court as distributing "just and equitable shares", the very concept the Court had itself rejected. The Court's concern was to identify, in an equitable manner, the area of the natural prolongation of a coast to which the State had title *ipso jure*; but that required, first, a realistic assessment of the coast and, then, a recognition that areas and coastal lengths must in equity be in some reasonable degree of proportionality.

6.27 This was the Court's principal use of proportionality. It may be said that the Court envisaged a secondary role for proportionality in any areas of "overlap" of natural prolongations[3]. But this was only proportionality in the sense of a division in agreed proportions or, failing agreement, an equal division of the area of overlap, and applied to this much smaller area. In contrast, the principal role of proportionality applied in the relevant area as a whole, and involved, not equal division, but a division having a reasonable relationship to the lengths of the relevant coasts.

---

[1] *Libyan Memorial*, paras. 6.90-6.93.

[2] *North Sea Continental Shelf, Judgment, I.C.J. Reports 1969*, p. 52, para. 98.

[3] *Ibid.*, p. 53, para. 101(C)(1) and (2) [*dispositif*]. See para. 7.11, below, for a fuller discussion of this point.

6.28 In the *Anglo-French Arbitration*, the Court of Arbitration, like this Court, saw proportionality as a general test of the equity of the result: as "a criterion or factor relevant in evaluating the equities of certain geographical situations ...[1]". Certainly the Court of Arbitration did not assume that the test necessarily applied in all cases[2], although the Court did apply it in that case. As indicated in the preceding section, the Court of Arbitration adopted a basic median line throughout the English Channel precisely because it maintained "the appropriate balance between the two States ... with approximately equal coastlines[3]". This is the application of proportionality between opposite States: an "appropriate balance" is a "reasonable proportion". And this view is confirmed by the fact that the Court's enclave solution for the Channel Islands was dictated by the Court's desire to avoid upsetting this balance, this reasonable proportionality. The Court rejected the United Kingdom's proposal for a median line between those Islands and the French coast precisely because this would have involved a "disproportion" or "imbalance": those are the very words used by the Court[4]. Thus, the Court did apply proportionality as between States with opposite coasts. It did not use the test by reference to actual figures of coastal lengths and shelf areas simply because, as indicated earlier, the broadly equal division of the area by the median line was self-evident.

6.29 In the *Tunisia/Libya* case the Court emphasised the role of proportionality "as an aspect of equity[5]". It applied a rough test of proportionality to all the relevant coasts of the parties, both the coasts in a relationship of adjacency and the coasts in a more opposite relationship. It measured those coasts by lines of general direction, "without taking account of small inlets, creeks and lagoons", and compared them with the sea-bed areas below the low-water mark. And, in the result, it was satisfied that the rough approximation of the ratios satisfied the test.

6.30 In the context of the present case, therefore, the role of the proportionality test or factor cannot be ignored. For, under the guise of rejecting the applicability of this "test", what Malta is inviting the Court to do in fact is to ignore the length (or perhaps lack of length) of the

---

[1] *Anglo French Arbitration, Decision of 30 June 1977* (Cmnd. 7438), p. 61, para. 101.

[2] *Ibid.*, p. 60, para. 99.

[3] *Ibid.*, p. 95, para. 201.

[4] *Ibid.*, p. 94, para. 198. Note that the Court also used proportionality in relation to the Scilly Isles, regarding them as productive of "disproportionate effects" on the equidistance line and therefore requiring "appropriate abatement" in equity: *ibid.*, pp. 116-117, paras. 249-250.

[5] *Continental Shelf (Tunisia/Libyan Arab Jamahiriya), Judgment, I.C.J. Reports 1982*, p. 91, para. 131.

Maltese coast. This simply cannot be done, because, as the following propositions — compatible with the jurisprudence of the Court — demonstrate:

—A State's title to any area of shelf depends upon its coast.

—The starting point for the determination of the natural prolongation of a State as well as of the delimitation exercise is its coast.

—The greater the difference in the length of the two opposite coasts, the greater is the need to utilise the test of proportionality as an indication of the equity of the result.

> With equal coasts the equitable result of a median line may be self-evident absent other compelling circumstances, but that becomes less and less true as the disparity between coastal lengths increases. In the present case, with the great difference in coastal lengths, the need to apply the proportionality test is all the greater.

—The application of the proportionality factor will serve to avoid encroachment not only of one State's shelf on that of the other but also on that of third States.

> As has been demonstrated[1], the Maltese case simply ignores the presence of third States. This is no accident, and the coincidence of this approach with the rejection of proportionality is equally no accident. For, in truth, it is by discarding proportionality and all concern with the very limited Maltese coast that Malta is able to lay claim to vast areas of shelf, lying to the east, which can only be realistically regarded as lying between the Italian and Libyan coasts. In effect, Malta's claim postulates a Maltese coast stretching far to the east. It is the refashioning of geography to an extraordinary degree, and it produces an encroachment on the shelf areas of other States which any sensible application of the proportionality factor would avoid. To put the point in different terms, in a confined sea — like the Mediterranean — because of the proximity of many States, the proportionality factor becomes an indispensable tool of equitable delimitation.

6.31 The emphasis in the Maltese Memorial on the distance between the Libyan and Maltese coasts, and the location of Malta in relation to Libya is interesting, though, it must be added, the implications of these factors are not obvious from the Memorial itself. A Malta 18 miles off the Libyan coast would be a very different matter from a Malta 180 miles off the coast: and it is the more distant Malta which, by the median line method, gets the larger shelf area[1]. The element of distance leads directly to the conclusion that the median-line method is inappropriate and inequitable, and that whatever method is used there is a need to verify the equity of the result by the proportionality test.

---

[1] See Chapter 2, Section A.4., above.

6.32 One final point has to be made. In all the cases, the proportionality test is seen as an aspect of equity; its role is to ensure an equitable result, based on the two coasts. It is inconceivable that equity — and with it the proportionality test as an aspect of equity — should be eliminated between States with opposite coasts. In essence, that is what the Maltese argument seeks to achieve.

3. Malta's Introduction of an Unacceptable Form of Proportionality Test

6.33 The Maltese Memorial contains a latent contradiction. On the one hand, there is the repeated assertion that the test of proportionality cannot be applied as between opposite coasts[2]; on the other hand, there are parts of the Maltese argument which assume the applicability of a form of proportionality test and other parts which actually rely on it.

6.34 For example, at paragraph 39 of the Maltese Memorial we are given the area of the entire "Maltese shelf" (approximately 60,000 square kilometres), and at paragraph 52 the area of shelf supposed to attach to Libya by virtue of a median-line delimitation with Malta (approximately 400,000 square kilometres)[3]. Then, at paragraph 117, these two areas are compared, and reference is made to the "impressive longitudinal spread of continental shelf" attaching to Libya. The question arises, why are these comparisons being made, if not as a form of proportionality test? The comparison of shelf areas is certainly one part of the orthodox proportionality test. What is unorthodox about the Maltese use of the test is the omission of the other relevant factor—the respective coastal lengths of the Parties—and the omission of any reasoning to justify the relevance of the areas chosen.

6.35 The omission of the coastal lengths denotes the basic weakness in the Maltese case, and the rejection of the relevance of coastal lengths goes hand in hand with the rejection of the test of proportionality in its orthodox form.

6.36 Yet it is not only by the comparison of areas that Malta uses proportionality. The proportionality factor is implicit in the "trapezium" demonstration[4]. For Malta has chosen a geometrical form which is calculated to divide the area in rough proportions of 1:3, so that Libya will always appear to be getting roughly three times as much shelf as Malta. The fact is that if a triangle is taken, and its two sides are joined by a line bisecting those two sides (in effect, a "median" line), a lower sector is produced which is three times as large as the upper sector. And this remains true whatever the length of the base of the triangle. Now if a "trapezium" is used instead of a triangle, so that at the apex there is a short side rather than a point, it makes very little difference: the two sectors remain in an approximate ratio of 1:3[1].

---

[1] See paras. 7.26 and 7.27, below.

[2] *E.g.*, *Maltese Memorial*, Chapter V, section 4, paras. 127-130; Chapter IX, section 6, paras. 256-258.

[3] Libya does not accept either the basis for or the calculation of these figures. See also fn. 4 to p. 41, above.

⑫ [4] See *Maltese Memorial*, Figure A, at p. 118. See also Chapter 7, Section B, below, and the *Annex* at the end of this Vol. I.

6.37 Thus, the "trapezium" is merely another form of proportionality, although unacceptable in that form. Unlike the orthodox and proper test, however, it is designed to eliminate the ratio of two sides (or the two opposite coasts). The relative length of the apex — be it a mere point or a short side — can be ignored. So long as the apex is short, the result will always be roughly 1:3 and this will be true however long the base. The idea is ingenious—if possibly lacking in frankness — and it certainly relies on the proportionality of the two sectors.

---

[1] See the *Annex* at the end of this Vol. I, which contains a critique of the "trapezium exercise". See also para. 2.45, above, discussing the ratios between the relevant coasts of Libya and Malta in the present case, the most generous ratio to Malta being roughly 1:8.

CHAPTER 7

THE INEQUITY OF MALTA'S PROPOSED SOLUTION

7.01 The equity—or inequity—of any proposed method of delimitation cannot be judged by reference to what may be claimed as the "inherent" virtues of the method, a theme that seems to pervade the whole Maltese Memorial with respect to equidistance. For, if it were correct, how could one explain the opposition of the majority of States to the express reference to this method in the text of Article 83 of the Convention on the Law of the Sea? And how could one explain the repeated affirmations, by this Court and the Court of Arbitration in the 1977 ***Anglo-French Arbitration***[1], that no method has any ***a priori*** claim to adoption, and that the appropriateness of any method is the result of the circumstances of the particular case, and not the result of any assumed virtues of the method as such?

7.02 The correct approach to delimitation must start from the following basic principle, recently reaffirmed in the 1982 Judgment in the ***Tunisia/Libya*** case in the following terms:

> "The delimitation is to be effected in accordance with equitable principles, and taking account of all relevant circumstances[2]."

It is the emphasis on all relevant circumstances which is significant, for it is only by the careful selection and weighing of all relevant circumstances that the appropriate method—appropriate to the particular case—is to be determined. As aptly stated by the Court of Arbitration in the 1977 Award—

> "... this Court considers the appropriateness of the equidistance method or any other method for the purpose of effecting an equitable delimitation is a function or reflection of the geographical and other relevant circumstances of each particular case[3]."

7.03 Thus, the appropriateness of equidistance has to be determined in this case, not by reference to any claims as to its inherent virtues or as to the frequency of its use in agreements between States in other, quite different situations, but by reference to the relevant circumstances of this particular case.

A. Equidistance Ignores the Relevant Circumstances Including Those of a Geographical Character

7.04 In the Libyan Memorial (paragraph 7.11) the rather elementary point was made that, in the nature of the method, equidistance can only take account of geographical factors since it depends entirely on the relationship of the two relevant coasts—it cannot take account of other relevant factors such as geomorphology, geology, physical appurtenance of shelf to landmass, conduct of the parties, effect of delimitations with third States or the element of proportionality. Indeed, the further point was made that strict equidistance will in many cases fail to reflect even the essential geographical relationships[1], since features such as promontories, offshore islands, convex or concave coastlines and the like will distort the course of an equidistance line.

---

[1] ***Anglo-French Arbitration, Decision of 30 June 1977*** (Cmnd. 7438), p. 54, para. 84.

[2] ***Continental Shelf (Tunisia/Libyan Arab Jamahiriya), Judgment, I.C.J. Reports 1982***, p. 92, para. 133(A)(1) [***dispositif***].

[3] ***Anglo-French Arbitration, Decision of 30 June 1977*** (Cmnd. 7438), p. 59, para. 97.

84

7.05 With the submission of the Maltese Memorial we now have confirmation of these propositions. It is quite evident that the equidistance method proposed by Malta would ignore all the physical factors of appurtenance and the true geomorphological and geological structure of the ⑱ relevant area[2]. This is evident from *Map 17* showing Malta's claimed equidistance line superimposed on a bathymetric map of the Central Mediterranean. It is oblivious to the effect of existing or prospective delimitations with third States[3]. With regard to proportionality, Malta professes to disregard it as irrelevant in the case of States with opposite coasts, but then re-introduces it, in spurious and quite unacceptable forms[4]. Of course, by its very nature equidistance can take no account of the conduct of the Parties; and the invalidity of Malta's assertion that equidistance was established as the *status quo* has already been noted[5].

7.06 Therefore, Malta's virtual silence as to the physical features of the sea-bed and subsoil is, on reflection, less surprising than it may at first appear[6]. They are factors which cannot be taken account of by equidistance. Instead, the Maltese Memorial speaks of the area as a "geological continuum[7]" and quickly slips into a discussion of certain geographical factors, the only factors having any bearing on the equidistance method. Malta's failure even to refer to the factor of delimitations with third States, discussed in Section A. 4. of Chapter 2 above, is remarkable in light of the undoubted fact that, from the 1969 Judgment onwards, the jurisprudence has consistently maintained the relevance of this factor[8].

---

[1] See the comment by Judge Oda in his dissenting opinion in the *Tunisia/Libya* case, *Continental Shelf (Tunisia/Libyan Arab Jamahiriya), Dissenting Opinion, I.C.J. Reports 1982*, p. 261, para. 166.

[2] See Chapter 2, Section C, above.

[3] See Chapter 2, Section A. 4., above.

[4] See Chapter 6, above.

[5] See Chapter 1, above.

[6] These features are, of course, mentioned in para. 56 of the *Maltese Memorial* but then follows the conclusion in para. 57 that the area is a "continuous continental shelf", a conclusion not borne out by the facts.

[7] *Maltese Memorial*, para. 269; see also para. 57.

[8] See the references at para. 6.74 of the *Libyan Memorial*. See, too, the *Anglo-French Arbitration, Decision of 30 June 1977* (Cmnd. 7438), pp. 29-31, paras. 24-28, referring to the potential U.K./Ireland boundary.

⑫ However, after examining Figure A at page 118 of the Maltese Memorial—which is based on the assumption that the entire Libyan coast as far east as approximately the 23° E longitude (at Ras at-Tin) is opposite Malta — the need for such silence is apparent. This assumption of Malta may be said to prejudice not only a future Italy/Libya delimitation but also a future Greece/Libya delimitation. As to the element of proportionality, this has been the subject of the previous Chapter where it has been demonstrated that the proposed Maltese equidistance line cannot produce a result that is even remotely equitable in the light of the test of proportionality.

7.07 The relevant geographical factors, however, deserve additional attention here since geography is the one relevant circumstance that equidistance by its very nature must take account of. In its discussion of geographical factors, the Maltese Memorial is characterised by a degree of abstraction (as to the law) and of unreality (as to the facts) which combine to produce an improper and unacceptable use of this particular category of relevant factors.

7.08 As to the law, the citation of legal authority to support the use of equidistance as a method that will take full account of the geographical factors and produce an equitable result is simply incomplete. For with each and every citation what is missing is a description of the actual geographical situation that the Court (or, in the case of State practice, the States in question) had in mind.

7.09 For example, consider the citations from the 1969 Judgment. The Maltese Memorial relies heavily on paragraph 57 which states:

> "The continental shelf area off, and dividing, opposite States, can be claimed by each of them to be a natural prolongation of its territory. These prolongations meet and overlap, and can therefore only be delimited by means of a median line; and, ignoring the presence of islets, rocks and minor coastal projections, the disproportionally distorting effect of which can be eliminated by other means, such a line must effect an equal division of the particular area involved[1]".

7.10 It will be recalled that at this juncture in its Judgment the Court had no specific situation in mind—it was referring, quite generally, to the discussions in the International Law Commission and explaining why the Commission had experienced more difficulty with the equidistance boundary between adjacent States and less difficulty with the median line between opposite States. Now if one postulates the situation of two opposite *and equal* coasts—and it can fairly be assumed that it was this situation which the Court had in mind—the statement is obviously correct. For not only can these minor coastal projections be discounted by various

---

[1] *North Sea Continental Shelf, Judgment, I.C.J. Reports 1969*, p. 36, para. 57.

means but, in practice, their effect on a median line is minimal. This is for the very obvious reason that the line is controlled by such features over only a small stretch of the line, and thereafter the line is controlled once more by the main coastline. But if, as in this case, there are no opposite and equal coasts—but on one side simply a small island group—the geographical situation is changed totally. A single point then controls a vast segment of the line. The premise upon which the Court's dictum was founded is removed, and there is simply no warrant for applying this dictum to a situation which was not in the mind of the Court.

7.11 The same misrepresentation occurs in relation to the Maltese Memorial's citations from paragraphs 57 and 101 of the 1969 Judgment[1]. This can be seen from a close look at paragraph 101 of that Judgment. For it was said in paragraph 101(C) of the *dispositif* that—

> "(1) delimitation is to be effected by agreement in accordance with equitable principles, and taking account of all the relevant circumstances, in such a way as to leave as much as possible to each Party all those parts of the continental shelf that constitute a natural prolongation of its land territory into and under the sea, without encroachment on the natural prolongation of the land territory of the other . . .".

Paragraph 101(C)(2) continued that if, after this process, there are left areas that overlap then "these are to be divided . . . in agreed proportions or, failing agreement, equally . . .". It is clear that the Court never contemplated that the whole area of the continental shelf to be delimited was an area of "overlap", as Malta would now have us assume, but only this narrow area. The Court's dictum has simply been taken out of context by Malta and an artificial "area of overlap" has been constructed on the basis of an invalid geometric exercise.

7.12 A similar trick of abstraction pervades the use made in the Maltese Memorial of the Decision in the *Anglo-French Arbitration*. At paragraphs 121 to 124 of the Maltese Memorial under the heading of "The Significant Rôle of Short Abutting Coasts in Delimitation", the argument is made that "apart from unusual geographical elements, any coastal feature counts equally and must be given the appropriate controlling effect[2]". To support this argument, the Memorial cites paragraph 248 of the Decision (which noted that in the Atlantic Sector the relevant coasts were Finistère and Ushant on the French side and Cornwall and the Scillies on the United Kingdom side) and concludes with the following astonishing proposition:

---

[1] *North Sea Continental Shelf, Judgment, I.C.J. Reports 1969*, p. 37, para. 57 and p. 54, para. 101. The citation occurs at para. 269 of the *Maltese Memorial*.

[2] *Maltese Memorial*, para. 122.

> "In such circumstances the equidistance method was applied to give the same effect in principle both to the very attenuated feature of the Cornish peninsula and to the outlying Scilly Isles as in the case of the considerably more substantial mainland of Finistère[1]."

This statement is highly misleading, despite the qualification of a footnote[2], for it fails to note that the Court gave only half-effect to the Scillies, even though the Scillies and the Cornish peninsula constitute a much larger coastline — as compared with Finistère and Ushant — than does the coast of Malta compared with the Libyan coast. And what the Maltese Memorial fails to bring out is that the 1977 Decision applied equidistance throughout the English Channel precisely because it lay between two broadly equal coasts in relation to which the Parties themselves agreed that a median line was appropriate. As the Court of Arbitration concluded:

> "It follows that where the coastlines of two opposite States *are themselves approximately equal* in their relation to the continental shelf not only should the boundary in normal circumstances be the median line but the areas of shelf left to each Party on either side of the median line should be broadly equal or at least broadly comparable[3]."

Thus, far from supporting the Maltese proposition, the Court of Arbitration's Decision runs quite contrary to it.

7.13 The same abstract treatment of State practice leads to a distortion of the principles to be derived from it. As was shown in Section C of Chapter 5 above[4], the use of State practice by Malta is at a level of abstraction such that it is divorced from the actual geographical characteristics of each particular case. Thus, to take the example cited at paragraph 125 of the Maltese Memorial, the use of the median line between the Faroes and Norway under the Agreement between Norway and Denmark of 15 June 1979[5] does not support the "significance of short abutting coasts". That agreement cannot be isolated from the relevant geographical circumstances of the area, and if regard is had to the proximity of United Kingdom territory (the Shetlands and the Scottish mainland) and the fact that an existing median line had been agreed between those two opposite and equal coasts of Norway and the United Kingdom, no other solution but a continuation of that same median line was reasonable or feasible over the very short stretch of boundary between the Faroes and Norway. The difference in the length of that line, as compared with the length of the boundary Malta now claims against Libya, will not have escaped the notice of the Court.

---

[1] *Maltese Memorial*, para. 124.

[2] Footnote 2 to p. 39 of the *Maltese Memorial* does say, somewhat coyly, "subject to some adjustment in the latter case: Decision, paras. 243-251." Note that the same attempt to assimilate the Malta-Libya relationship with that of the U.K. and France is made at para. 238, although at that point the comparison shifts from the Atlantic Sector to the English Channel Sector.

[3] *Anglo-French Arbitration, Decision of 30 June 1977* (Cmnd. 7438), p. 89, para. 182. [Italics added.]

[4] See also the *Annex* of delimitation agreements.

[5] See *Maltese Memorial*, Annex 20, and the map opposite p. 39. See also paras. 5.65 and 5.66, above and the *Annex* of delimitation agreements, No. 62.

7.14 When the discussion of the actual geographical characteristics of the present case contained in the Maltese Memorial is examined, the same kind of unreality emerges. In paragraph 238 it is said:

> "In the circumstances of the present case, no intervening islands or other minor and casual features of the geography of the area create any complications."

Again, at paragraphs 262 and 263 it is said that "there are no intervening islands or other abnormal geographical features", and that "there is in legal terms a complete absence of abnormal geographical features in the present case": and, finally, "... the *relationship* of the Maltese and Libyan coastlines is quite unremarkable".

7.15 This "myth of normality" is, in fact, fundamental to the Maltese case. It assumes that only "intervening islands or other abnormal geographical features" take a situation out of the "normal[1]". And the Maltese Memorial states expressly that the length of the two opposite coasts is irrelevant:

> "In the present case the length of coastlines is of little or no consequence for the law of delimitation[2]."

7.16 This is, indeed, an extraordinary proposition. No authority is given to support it (for the very good reason that none exists). The Court's use of "coastal fronts" in the 1969 Judgment is ignored, doubtless on the view that this concept is linked to proportionality — and, in Malta's view, proportionality is irrelevant in the present case. The Court's measurement of the relevant coastal fronts of Libya and Tunisia in the 1982 Judgment is ignored, presumably for the same reason. Similarly, the Court of Arbitration's stress on the broad equality (in length) of the United Kingdom and French coasts, to support the median line throughout the English Channel in its 1977 Award, is ignored. The fact that in the State practice the median line is generally used between opposite coasts where the two coasts are broadly equal[3] receives no mention.

---

[1] This point is discussed in greater detail at paras. 2.13 and 2.14, above, and at para. 7.21, below.

[2] *Maltese Memorial*, para. 264.

[3] See paras 5.61-5.97, above.

7.17 Most paradoxical of all, however, is the fact that, far from demonstrating the irrelevance of coastal lengths, Malta's own "trapezium exercise" depends upon the length of the Libyan coast. As the next section of this Chapter shows, that whole artificial construct depends upon the chosen length of the Libyan coastline — the Maltese "area", the northern or upper part of the trapezium, is determined by the length of the base, the length of the Libyan coast. Thus, when Malta says that coastal lengths are irrelevant what is really meant is that Malta's coastal length is irrelevant.

7.18 The conclusion to which one is forced by the Maltese argument is totally at variance with the established law. The Court has consistently emphasised the correlation between a State's coast and its shelf areas:

> "The geographic correlation between coast and submerged areas off the coast is the basis of the coastal State's legal title ... the coast of the territory of the State is the decisive factor for title to submarine areas adjacent to it[1]."

And, not only is the coast the basis of title, but it is the starting point or the "starting line" for the delimitation exercise[2].

7.19 It cannot be the case, as Malta contends, that so long as a State has some coast it matters not what length that coast is. For the Courts have repeatedly stressed the element of length:

> "There can never be any question of completely refashioning nature, and equity does not require that a State without access to the sea should be allotted an area of continental shelf, any more than there could be a question of rendering the *situation of a State with an extensive coastline similar to that of a State with a restricted coastline*[3]."

> "Equity does not, therefore, call for coasts, the relation of which to the continental shelf is not equal, to be treated as having completely equal effects[4]."

---

[1] *Continental Shelf (Tunisia/Libyan Arab Jamahiriya), Judgment, I.C.J. Reports 1982*, p. 61, para. 73.

[2] *Ibid.*, p. 61, para. 74.

[3] *North Sea Continental Shelf, Judgment, I.C.J. Reports 1969*, pp. 49-50, para. 91. [Italics added.]

[4] *Anglo-French Arbitration, Decision of 30 June 1977* (Cmnd. 7438), p. 116, para. 249.

Nor can it be right to relegate coastal lengths to the mere test of proportionality[1], for the State's coast is relevant to title, and the area of entitlement is directly dependent on the extent of the coast[2]. This conclusion was well expressed by Judge Bustamante y Rivero in his Separate Opinion in the *North Sea* cases —

> "... the conclusion is inescapable that the State which has a longer coastline will have a more extensive shelf. This kind of proportionality is consequently, in my view, another of the principles embraced by the law of the continental shelf[3]."

7.20 The Maltese argument that coastal lengths cannot be considered, as stated in paragraphs 129 to 130 of its Memorial, seems to be that equity requires the comparison of "like with like", and since the Maltese and Libyan coasts are very unalike, they cannot be compared; moreover — the argument continues — to compare unalike coasts would be contrary to the notion of title *ipso facto* and *ab initio*, and would constitute a reversion to the unacceptable doctrine of the "just and equitable share". This sequence of argument is simply a sequence of *non sequiturs*[4]. As was noted in the previous Chapter, in neither its 1969 Judgment nor its 1982 Judgment did the Court proceed on the basis that the parties had "like" coasts. But if the Maltese argument is right, how could the Court, in both cases, have regard to the coastal lengths of the parties? And how was it possible for the Court to do so without itself adopting the very doctrine it rejected, the doctrine of the "just and equitable share"? The sequence of argument used by Malta simply does not withstand analysis in the light of the jurisprudence of the Court.

7.21 Yet it is the treatment of the geographical factors in the Maltese use of the equidistance method which is most astonishing. In this regard it is necessary to distinguish between the Maltese claim-line, which is based on strict equidistance, and the Maltese "trapezium exercise", which is a form of "crude" equidistance. Taking first the claim-line, based on strict equidistance, it is fair to assume that the Maltese argument for using strict equidistance is based upon its characterisation of the geographical situation as "normal" or "simple". Indeed, it is clearly assumed that, given the absence of intervening islands or promontories, the situation must be "normal[5]". In theory, however, "normality" cannot be equated with the absence of promontories or intervening islands. Such a view ignores the many other peculiarities of geographical configuration which can occur and which have to be considered before it can be assumed that the strict equidistance method will yield an equitable result. In the present case we have a very clear example of a significant geographical circumstance — the marked disparity in the lengths of the two coasts — which is treated as "normal" only because it is assumed that promontories and intervening islands are the sole examples of "abnormality".

---

[1] See *Maltese Memorial*, paras. 129-130.

[2] It may be noted that at para. 206 the *Maltese Memorial* invokes the O.A.U. Declaration of 19 July 1974 on the Issues of the Law of the Sea. The Declaration refers expressly to "(a) The size of islands." What can this possibly mean except area and *length*? See para. 4.37, above.

[3] *North Sea Continental Shelf, Judgment, I.C.J. Reports 1969*, Separate Opinion of Judge Bustamante y Rivero, p. 59, para. 4.

[4] See para. 6.16 above.

[5] The "myth of normality" is also discussed at paras. 2.13, 2.14 and 7.15, above.

7.22 Thus, the Maltese argument is highly abstract, and involves the following propositions:

(i) Equidistance produces an equitable result between opposite coasts in "normal" situations.

(ii) Here the situation is "normal", there being no promontories or intervening islands.

(iii) Therefore, equidistance produces an equitable result.

It can be seen that, except in the sense of determining that there are no promontories or intervening islands, this sequence of argument does not involve an examination of the actual geographical features of the two coasts at all. What is also missing is an indication that the opposite coasts must generally be of comparable length for the situation to be a "normal" one as claimed in (i) and (ii) above.

7.23 The correct approach would require the identification of the two relevant coasts, using "relevant" in the sense that these are the coasts which abut on the area to be delimited. There is, in the Maltese Memorial, no identification of the relevant Maltese coast. We have no argument to show why this or that length of coast is relevant: indeed, we have no demonstration even of the basepoints which govern and control the actual claim-line. It is true that we are told that Malta enjoys a considerable number of basepoints[1] but there is no basis in logic or in the law of continental shelf delimitation for suggesting that the number of basepoints has any significance *per se*[2]. The number of basepoints achieves significance only when it bears a relationship to the length of the coast. The one feature of the Maltese coast which is studiously ignored is its very short length. To draw attention to the short length of Malta's coast would only serve to draw attention to Malta's deceptive use of controlling basepoints. The effect created by multiple use of a single basepoint is, of course, to create the illusion of a long coast when in actuality only a short coast is involved.

---

[1] *Maltese Memorial*, paras. 118-120.

[2] As Malta recognises in the sentence "... many potential basepoints on a long, more or less regular coastline are in a sense wasted or redundant" (para. 120).

7.24 In fact, if a short coast is placed opposite a long coast, equidistance cannot reflect the discrepancy in coastal lengths. This is illustrated ⑯ by *Diagram A* facing this page. Figure 1 (on *Diagram A*) illustrates the position of two States, having facing coasts of equal length. In that situation, the Median Line (x-y) adequately reflects the similar relationship that the coast of each State bears to the area of continental shelf lying between them, and where it may be said that the natural prolongations of each State meet and overlap in the same fashion (in the absence, of course, of any discontinuities interrupting the natural prolongations). In Figure 2 (on *Diagram A*), the length of the coast of State 1 (A-B) has been reduced to one-tenth the length of the coast of State 2 (C-D). Clearly, the relationship that the coasts of each State in Figure 2 bears to the area of continental shelf between them has radically changed from Figure 1. Yet, as can be seen on Figure 2, this change produces little effect on the equidistance line (x′-y′), which shows only a tendency to curve slightly upwards to the extreme left and right of the Figure. Figure 3 shows that even when the coast of State 1 is reduced to a mere dot, the areas which the equidistance method would allot to State 1 are not significantly different from those areas allotted to State 1 in Figures 1 and 2. In other words, these examples demonstrate how equidistance may have the effect of "rendering the situation of a State with an extensive coastline similar to that of a State with a restricted coastline[1]".

7.25 This inequitable result is due to the way in which the equidistance method works. On Figure 1 it can be seen that each point on the Median Line is arrived at by taking into account one point on each of the facing coasts. This adequately translates the equal relationship that the two States bear to the area to be delimited. On Figure 2, however, the equidistance method no longer reflects each State's relationship to the continental shelf. While each point on the long coast of State 2 (C-D) is — in turn and only once — taken into account for the construction of the line, points A and B of State 1 are used as many times as necessary to match the difference in lengths between the coasts of the two States. This is, of course, further demonstrated by Figure 3, where one single point is shown as having, according to the play of the equidistance method, virtually the same relationship to the continental shelf as a long coastline.

7.26 But the distorting effect that the equidistance method may have is not only dependent on the relative length of coasts of the States concerned. It also depends on the distance separating them. In fact, the more distant State 1 is from State 2, the flatter the equidistance line will remain, and the closer x and x′ and y and y′ will be to each other. Indeed, once the conditions for distortion are present — such as a great difference in coastal length — this effect is multiplied by distance. However, this distortion occurs not just by virtue of a flattening out of the equidistance line, as noted above, but — more significantly — because of the larger area of continental shelf to be divided between the two States due to the greater distance between them. As noted by this Court in 1969, the distorting effects of the equidistance method may well be "comparatively small within the limits of territorial waters, but produce their maximum effect in the localities where the main continental shelf areas lie further out[1]". This statement, although made in the context of "lateral equidistance lines", is equally valid in the present case, where a great difference in coastal lengths exists and where the distance between the two States is considerably greater than the breadth of their territorial seas.

---

[1] *North Sea Continental Shelf, Judgment, I.C.J. Reports 1969*, p. 49, para. 91.

7.27 The truth is that the equidistance line is a method wholly unsuited to the situation of two opposite coasts of markedly different lengths. The method is simply incapable of reflecting that difference in lengths, and this problem is rendered more acute — and hence the result more inequitable — by the distance which separates the two coasts. This is the true relevance of distance in the present case.

7.28 These facts were recognised by Libya in its opposition to Malta's 1972 proposal to adopt a median line solution. Libya's 1973 proposal, in contrast, took into account the differences in lengths of coasts and hence avoided the distorting effect of equidistance particularly in the light of the large area of continental shelf lying between the relevant coasts of the Parties. Libya has consistently maintained that only a solution that reflects this difference in coastal lengths can be equitable in the present case.

7.29 If one has regard to the Libyan coast selected as the "relevant" coast in the Maltese "trapezium exercise"[2] in the light of its use of the equidistance method, it is apparent that it is this coast which determines the length of the median line. The selection of a Libyan coast as far east as Ras at-Tin, some 316 kilometres further east than Benghazi, has no justification other than that it is necessary to accommodate[3] the easterly reach of the Maltese claim-line. Nowhere in the Maltese Memorial is any explanation offered as to why this enormous length of Libyan coastline is "relevant" to the delimitation. In the selection of the Libyan coast actual geography is irrelevant: the coast is determined solely by the need to accommodate the Maltese claim, not by geography.

---

[1] *North Sea Continental Shelf, Judgment, I.C.J. Reports 1969*, p. 37, para. 59.

[2] See Section B, below.

[3] In fact, the Libyan coast does not quite accommodate the Maltese claim; it would be necessary to treat part of the Egyptian coast as "relevant" to achieve that. See Section B, below, and the *Annex* at the end of this Vol. I for a critique of the "Trapezium Exercise". It is of interest to note that during the Intervention Hearings in the *Tunisia/Libya* case, the eastern limits of the area termed relevant by Malta were placed considerably to the west of Ras at-Tin. Indeed, Counsel for Malta suggested that the "normal way" for drawing an equidistance line between Malta and Libya would be to use a baseline along the Libyan coast from Ras Ajdir to approximately Sidi Sueicher, a town located some 30 kilometres northeast of Benghazi and some 285 kilometres *west* of Ras at-Tin. See Presentation of Mr. E. Lauterpacht, Q.C., at the Oral Hearings in the *Tunisia/Libya* case, Request by Malta to Intervene, Thursday, 19 March 1981, afternoon session (CR 81/2, p. 13).

7.30 With the "trapezium exercise", which is essentially a simplified form of equidistance, all the criticisms enumerated above remain applicable. The irrelevance of the actual geography is even more marked because, (13) as Figure B in the Maltese Memorial shows, the hypothetical Maltese coast can be restricted to a single point without making very much difference to the result. The fact that this one point lies on the north-facing coast of Gozo simply emphasises the total divorce of this method of simplified equidistance from the actual geographical facts.

7.31 It must be stressed, therefore, that the apparent reliance by Malta on the relevant circumstance of geography is a deception: for the Maltese method of delimitation — and the whole legal reasoning behind that method — in fact pays as little attention to the actual facts of geography as it does to the facts of geology or geomorphology.

7.32 The conclusion to this Section can be stated quite briefly. Of the four legally relevant factors or circumstances, namely, (i) the factors of geomorphology and geology, (ii) geographical factors, (iii) delimitations with third States, and (iv) the conduct of the Parties, Malta ignores two almost entirely. While Malta appears to take account of one, geography, in fact it does not do so. And as to the conduct of the Parties, the one remaining factor, Malta finds a relevance in its own conduct which does not exist. It can therefore be stated categorically that the Maltese Memorial and its method fails to take account of the relevant circumstances, contrary to the requirement in law that full account must be taken of all relevant circumstances in order to achieve an equitable result.

B. The Maltese "Trapezium Exercise"

7.33 The Maltese Memorial contains four paragraphs (paragraphs 244 to 247) explaining the relevance of the "Trapezium" shown as Figure (13)(12) B. Figure A is clearly a demonstration of the application of this exercise to the area regarded by Malta as relevant to the dispute. The whole exercise is designed to support the contention by Malta that the median line will provide an equitable solution in the present case.

7.34 It is not the intention, in this part of the Counter-Memorial, to give a full critique of this exercise: that is done in the *Annex* at the end of this Volume I of the Counter-Memorial.

7.35 However, it may be of assistance to the Court if the principal conclusions, set out in detail in the *Annex* at the end of this Volume I, are summarised here in the main body of the Counter-Memorial.

7.36 The Maltese Memorial suggests that the rationale for the trapezium exercise, as a kind of geometrical proof of the equity of the median line, rests on three "key elements". These are:

(i) The distance between Malta and Libya;

(ii) The location of Malta, supporting a "sufficient number of control points"; and

(iii) The extensive Libyan coastline.

7.37 In fact the significance of these three elements is neither explained nor obvious. The *distance* (in fact the height of the apex above the base) is not given and proves to be totally immaterial. The number of control points on the Maltese coast is of no significance (and in fact Figure ⑫ A of the Maltese Memorial uses only *one* point, lying apparently on the north-facing coast of Gozo). What is significant is the third element: the long east/west Libyan coastline. For this constitutes the base of the trapezium, and, as we shall see, it is the singular property of the trapezium that, with a short side at the apex, the length of the base determines the area. This produces the most extraordinary paradox, for Malta's shelf (the upper sector of the trapezium) is determined by the length of the Libyan coast, not Malta's own coast, and remains so whatever the distance or the length of the baseline.

7.38 Thus, simply treating the exercise as an abstract, geometrical exercise, there is no logic or cogency in the so-called rationale offered by Malta of the three supporting "key elements"; two are irrelevant on their face, and the third would seem to defy all logic as a justification for the equitable division of the area of the trapezium by a "median line". There is nothing "equitable" about it. It is simply a fact that the area is governed essentially by the length of the base, and with a short side for the apex the ratio of areas as between the upper and lower sectors (divided by the median line) is approximately 1:3.

7.39 If one turns from examining the trapezium exercise as an exercise in abstract geometry, and looks at it as applied to the actual coasts of the two Parties, then other observations have to be made.

First, for all its "self-evident" logic, it is not known that this proof of the equitableness of the median line has ever occurred to States, or to hydrographers, before.

Second, the exercise is, in fact, a demonstration (though an inappropriate one) of proportionality, the very test which Malta holds to be irrelevant[1].

Third, the exercise has nothing to do with the actual coastlines of the Parties. For the length of the apex (Malta's coast) is largely irrelevant to

---

[1] See paras. 6.10-6.24 above.

⑫⑬ the exercise and neither Figure A nor Figure B bear any relation to Malta's actual coast. As to the long, Libyan coast, no explanation is offered by Malta to show why this enormous length of coast is relevant to this delimitation. The explanation appears to be that the long base was necessary to accommodate the long median line. That is to say, with Malta having claimed an equidistance line far to the east, in the open Mediterranean, it was necessary to draw a trapezium large enough (and with a base long enough) to include within it a median line about the same length as
⑫ Malta's claim line (see Figure A).

Fourth, as to the "equitable" proportion of 1:3 between the upper and lower sectors, this is arrived at by *excluding* areas attaching to Malta, and *including* areas as attaching to Libya which in no sense lie between opposite Maltese and Libyan coasts.

Fifth, the median line would equally divide an area lying between the two coasts, but only on the assumption that the two coasts were equal. This would be to assume Malta to have a coast 15.3 times as long as it really is, and Libya's coast, as used in the trapezium, to be divided by half.

Sixth, for all the claimed "self-evident" properties of the trapezium exercise as a proof of the equity of equidistance, it is in fact impossible to use it in relation to a Maltese delimitation with either Italy or Greece.

CHAPTER 8

THE APPROACHES OF THE PARTIES TO DELIMITATION AND AN EQUITABLE RESULT

8.01 Libya's aim since the inception of this dispute has been to propose a solution that would lead to an equitable result. It was for this reason that Libya's 1973 proposal was not based on equidistance and, instead, reflected the predominant geographical factor of coastal lengths. Similarly, Libya never accepted the equidistance formula continually proposed by Malta since it would have led to a clearly inequitable result and was, thus, considered an inappropriate approach to the solution of the dispute.

8.02 The Libyan Memorial had as its purpose to set before the Court all the relevant factors and circumstances of the present case, together with Libya's understanding of the principles and rules of international law relating to delimitation of the continental shelf, and to suggest a result which would be equitable. Since the Libyan Memorial and this Counter-Memorial in effect constitute an integrated presentation of Libya's position[1], it is unnecessary at this stage to go further into the factual and legal basis of Libya's case: the relevant factors and circumstances and applicable principles and rules of international law have been fully set out. It was also shown in the Libyan Memorial how the position of Libya as to which areas of the continental shelf appertain to Libya and which to Malta—separated by a boundary within, and following the general direction of, the Rift Zone—would reflect and be consistent with all the relevant factors and circumstances of the present case. It is, therefore, not necessary that this be demonstrated again here. However, it is appropriate to review the positions of each of the Parties in order to point up the differences between the approach of each in applying equitable principles and in respect to the equitableness of the result to which their positions would lead.

8.03 These differences are brought out by the fact that whereas the Libyan approach has been to focus on the relevant factors and circumstances of the present case and to find a solution that would be equitable, the approach taken in the Maltese Memorial has been quite different. This is well illustrated by a paragraph in Malta's pleading which purports to be a resumé of the "equitable principles and considerations relevant to the present case" where it is said that in the "geographical circumstances presented by the present case, a departure from the equidistance method would involve a massive breach of the principle of non-encroachment[2]". Aside from the fact that no attempt is made by Malta to support this pronouncement by the facts of the present case or by the law, it is, in reality, an inversion of the true situation. For when Malta blandly runs its trapezium line[3] across the eastern boundary of the Pelagian Sea and out across the Ionian Sea—in total disregard of the geomorphology of the sea-bed as well as of the presence of Italy and Greece — and claims a natural prolongation eastward from a tiny piece of Maltese coast all the way to Ras at-Tin on the eastern shore of Libya, it is Malta which attempts to encroach on areas of shelf which are the natural prolongation of Libya from its large land territory and extensive coast. This extreme claim of Malta — across areas east of the area of concern in the present case that have no relationship to Malta's coasts — fits rather well the descriptive phrase used in the Maltese Memorial of a "massive encroachment". But it is Malta's encroachment on the natural prolongation of ⑰ Libya and not the reverse. This point is well illustrated by *Map 18*.

---

[1] See para. 10 of the Introduction of this Counter-Memorial at p. 5, above.

⑫ [2] *Maltese Memorial*, para. 234 (k). Figure A at p. 118 of the *Maltese Memorial* even goes so far as to suggest that the natural prolongations of Libya and Malta are identical.

⑫ [3] *Ibid.*, Figure A, at p. 118.

8.04 Malta has also called upon the Court, in effect, to put aside the rules that have evolved in connection with continental shelf delimitation because Malta is a small island State which presently has no petroleum resources. However, these facts do not make irrelevant the coasts of the Parties in the present case; nor do they justify ignoring the major discontinuities in the sea-bed and subsoil of the continental shelf lying between the coasts of the Parties and limiting Malta's entitlement to the south and to the east. Yet this is the effect of what Malta has asked of the Court in its Memorial.

8.05 Libya's position contrasts sharply with the inflexible Maltese declaration that only the equidistance solution will avoid a massive breach of the principle of non-encroachment. The end result, in Libya's view, must survive the test of an equitable result of which proportionality is a principal criterion and the comparative lengths of the relevant coasts of the Parties a major factor. Libya believes that a delimitation within and following the general direction of the Rift Zone accords with the test. However, Malta seeks to disqualify the application of proportionality as a test of the equitableness of the result, just as it seeks to avoid an examination of the facts of the case. Malta seeks refuge in a series of alleged principles, in hypothetical examples, in irrelevant considerations and in artificial constructs and the automatic application of mathematical means — the equidistance method and the trapezium exercise — which do not deal with the relevant factors and circumstances. Malta has also resorted in its Memorial to the technique of repeating assertions which were not initially correct in the expectation, it seems, that with repetition they might gain plausibility.

8.06 Perhaps the leading example of this technique is Malta's assertion, which is woven all through the Maltese Memorial, that "Malta's Equidistance Line" has become the *status quo* in the present case. The numerous defects in this argument have been dealt with in Chapter 1 above. What is revealing is that Malta, having stated that the conduct of the Parties is a relevant circumstance of the present case, fails to bring to the attention of the Court the only example of conduct that might be regarded to be of legal relevance because it involved the conduct of *both* Parties, not merely Malta. This was the no-drilling understanding between the Parties, at the time of entering into the Special Agreement, in areas lying between the lines proposed by Malta in 1972 and by Libya in 1973. In fact, until the Texaco-Saipem incident of 1980, no drilling by either Malta or Libya had occurred there. Libya's vigorous reaction in 1980 when this understanding was breached by Malta must be seen in this light.

8.07 It is quite astonishing how oblivious the Maltese Memorial is to the presence of neighbouring States with which there are, or in all likelihood will be, continental shelf delimitations. Surely, this is an important relevant circumstance in the present case that must have the effect of keeping the claims of all the States in this constricted area of the Mediterranean within reasonable bounds and that must affect the present delimitation.

8.08 The physical factors of the present case also reveal how different this case is from other cases of delimitation of the continental shelf examined in Chapter 5 above and analysed in the *Annex* of delimitation agreements. The importance and rarity of these features and the uniqueness of this particular setting is pointed up by this analysis. Malta's suggestion that the examples of "State practice" selectively discussed in the Maltese Memorial provide objective evidence of the equitableness of applying the equidistance method in the present case — aside from being a *non sequitur* — is factually wrong, as this study of delimitation agreements shows.

8.09 It is also impossible for Libya to agree that the physical setting in which this delimitation is to occur can be described on any objective basis as "simple" or "normal" and, in particular, that the sea-bed and subsoil of the continental shelf can be viewed as a "continuum" and lacking in "unusual features". The features constituting the Rift Zone and the Escarpments-Fault Zone which interrupt the continuity of the shelf to the south and east of Malta refute completely such a description. So also does the geographical contrast of coastal lengths.

8.10 Libya has demonstrated in considerable detail that the physical features constituting the Rift Zone which cuts across the shelf areas lying between Libya and Malta and the Escarpments-Fault Zone forming the eastern limits of the shelf area underlying the Pelagian Sea are major discontinuities in the sea-bed and subsoil of the continental shelf. Like the short length of the relevant coast of Malta in comparison to Libya's much longer coast, these physical factors cannot be brushed aside. They constitute relevant factors and circumstances of the present case that go to the entitlement of the Parties to areas of shelf and to the delimitation of such areas between them.

8.11 Thus, in Libya's view, it is the selection and weighing of the relevant factors and circumstances of the present case — particularly the physical factors — which is fundamental. By this means an equitable result may be reached through the application of equitable principles, one of which is the requirement that the result meet the test of proportionality.

READEX FICHE

Nothing in the Maltese Memorial has indicated to Libya any relevant facts or legal principles set forth in the Libyan Memorial requiring any modification in this Counter-Memorial. Accordingly, as will be seen in the following part of this Counter-Memorial, the Submissions of Libya contained in its Memorial are confirmed and maintained without supplementation.

SUBMISSIONS

SUBMISSIONS

Libya confirms and maintains its Submissions made in its Memorial as follows:

In view of the facts set forth in Part I of the Libyan Memorial, the statement of the law contained in Part II, and the arguments applying the law to the facts as stated in Part III of the Libyan Memorial; and

In view of the observations concerning the facts as stated in the Maltese Memorial and the statement of law as therein contained, and the additional facts and the statement of law contained in this Counter-Memorial; and

Considering that the Special Agreement between the Parties requests the Court to decide "what principles and rules of international law are applicable to the delimitation of the area of the continental shelf which appertains to the Republic of Malta and the area of continental shelf which appertains to the Libyan Arab Republic, and how in practice such principles and rules can be applied by the two Parties in this particular case in order that they may without difficulty delimit such areas by an agreement" in accordance with the Judgment of the Court:

May it please the Court, rejecting all contrary claims and submissions, to adjudge and declare as follows[1]:

1. The delimitation is to be effected by agreement in accordance with equitable principles and taking account of all relevant circumstances in order to achieve an equitable result.
2. The natural prolongation of the respective land territories of the Parties into and under the sea is the basis of title to the areas of continental shelf which appertain to each of them.
3. The delimitation should be accomplished in such a way as to leave as much as possible to each Party all areas of continental shelf that constitute the natural prolongation of its land territory into and under the sea, without encroachment on the natural prolongation of the other.
4. A criterion for delimitation of continental shelf areas in the present case can be derived from the principle of natural prolongation because there exists a fundamental discontinuity in the sea-bed and subsoil which divides the areas of continental shelf into two distinct natural prolongations extending from the land territories of the respective Parties.

---

[1] The numbered Submissions are as they appear in the *Libyan Memorial*.

9

5. Equitable principles do not require that a State possessing a restricted coastline be treated as if it possessed an extensive coastline.

6. In the particular geographical situation of this case, the application of equitable principles requires that the delimitation should take account of the significant difference in lengths of the respective coastlines which face the area in which the delimitation is to be effected.

7. The delimitation in this case should reflect the element of a reasonable degree of proportionality which a delimitation carried out in accordance with equitable principles ought to bring about between the extent of the continental shelf areas appertaining to the respective States and the lengths of the relevant parts of their coasts, account being taken of any other delimitations between States in the same region.

8. Application of the equidistance method is not obligatory, and its application in the particular circumstances of this case would not lead to an equitable result.

9. The principles and rules of international law can in practice be applied by the Parties so as to achieve an equitable result, taking account of the physical factors and all the other relevant circumstances of this case, by agreement on a delimitation within, and following the general direction of, the Rift Zone as defined in the Libyan Memorial.

(Signed)..
ABDELRAZEG EL-MURTADI SULEIMAN
Agent of the Socialist People's
Libyan Arab Jamahiriya

ANNEX

A Critique of the "Trapezium Exercise"

⑬ Malta's Memorial provides some four paragraphs (paras. 244-247) by way of explanation of "The Trapezium" shown as Figure B. It is said that "this figure provides a means of understanding the equitable solution resulting from the use of a median line in the division of the areas of shelf lying between Malta and Libya" (para. 244).

1. The Memorial's Commentary on the Figure

The four paragraphs of the Memorial do not, in fact, provide any rationale for the use of this figure. The commentary begins with a perfectly acceptable general proposition, *viz* "the equitable solution which the law calls for is the product of the coastal configuration and the other relevant circumstances" (para. 245). It then identifies three "key elements" in the coastal relationships of Malta and Libya, and these need to be examined with care.

First element

"*(a)* The *distance* between Malta and the Libyan coastline; and since it is *relationship* which is the key, it is precisely the distance, in conjunction with the location of Malta and the long regular coast of Libya, which is the significant factor."

Yet, if *distance* is the significant factor, why is the distance not given; or, indeed, why is it not demonstrated that the trapezium works with a short distance and not a long distance (or *vice versa*)? In fact, if Figure B is looked at simply as a geometrical figure it will be apparent that the shape of the trapezium — and therefore the areal ratio between the two sectors north and south of the median line — *is determined essentially by the length of the base of the trapezium chosen for the figure*. As we shall see, in real terms this means the length of the relevant Libyan coast chosen by Malta.

Second element

"*(b)* The *location* of the Malta group of islands and the opposite relationship thereof to the Libyan coastline produces a particular effect: a critically located Maltese group of islands supports a sufficient number of control points."

It is not very clear what this is supposed to mean. The *location* of Malta in relation to Libya seems to be no more than a repetition of the element of distance. In so far as it produces "a particular effect" we are not told what this effect is. The "critical" location of Malta is, *semble*, yet another way of reverting to the factor of distance. The only new element is the reference to Malta supporting "a sufficient number of control points".

But when one looks at the trapezium, whether as a purely geometric ⑬ figure (Figure B), or as a figure adapted to the actual map of the area ⑫ (Figure A), it will be seen that neither figure depends in any way on the number of control points on the Maltese coast. Figure A, for example, seems to depend on one point only, lying somewhat surprisingly *on the north-facing coast of Gozo*; and Figure B uses two points only, the east and west extreme points of the short coast of State A, from which to drop the sides of the trapezium. Thus, it is by no means clear that this "second element" is saying anything (or anything intelligible) at all.

Third element

> "*(c)* The extensive *west-east reach* of the Libyan coastline, in conjunction with the "set back" *location* of Malta, results in a trapezoidal figure: that is to say, the Libyan coastal extent is appropriately reflected in the southern segment of the trapezium ⑬ (Figure B, Zone 2), and the equidistance method of delimitation places equitable limits upon the latitudinal and southerly reach of the Maltese continental shelf entitlement (Figure B, Zone 2). The median line constitutes a natural northern boundary to the southern segment of the trapezium."

This, in its first phrase, reveals yet again that it is the Libyan coastal extent, which constitutes the base of the trapezium, that essentially determines the shape of the trapezium. It is said that the Libyan coastal extent "is appropriately reflected in the southern segment of the trapezium". Why so? Where is the argument or demonstration to show ***either*** that the particular length chosen is the correct length or "relevant coast" ***or*** that Zone 2 is an appropriate reflection of that coastal length? There is, in fact, no such argument or demonstration.

In addition, we are told that the median line constitutes a "natural" northern boundary to the southern segment (*i.e.*, to Libya's shelf). Yet nowhere are we told why this is "natural": it is the age-old device of asserting things (preferably with the aid of diagrams which seem to endow the assertions with the accuracy and objectivity of the science of mathematics) and hoping that they will be believed.

The remainder of this section is in similar vein. Without any supporting argument or demonstration we are simply told that "the principle of appurtenance is observed" (para. 246); that "the result is in complete conformity with the principle of non-encroachment" (para. 247); and that "as a matter of equitable principles and of ordinary logic ... ***within the zones between the two coastlines*** only equidistance can produce an equitable solution" (para. 247).

The conclusion must be that, on the basis of the commentary offered in the Maltese Memorial, there is no cogency whatever in the reasoning offered in support of the trapezium exercise. Nevertheless, it might conceivably be the case that, notwithstanding the paucity of reasoning in the Memorial, Malta had in fact contrived upon a geometrical proof of the equitableness of the equidistance method. It is therefore necessary to examine the trapezium exercise quite independently of the lack of justification in the Maltese Memorial.

2. The Trapezium Exercise and the Equidistance Method

There is, to Libya's knowledge, no known example of States ever having used the trapezium illustration in devising a boundary between opposite coasts. True, there must always be a first occasion for any practice. Yet there is an initial worry in the realisation that what is offered as a self-evident demonstration of the equity of the equidistance method has never before been seen as such by States or their hydrographers.

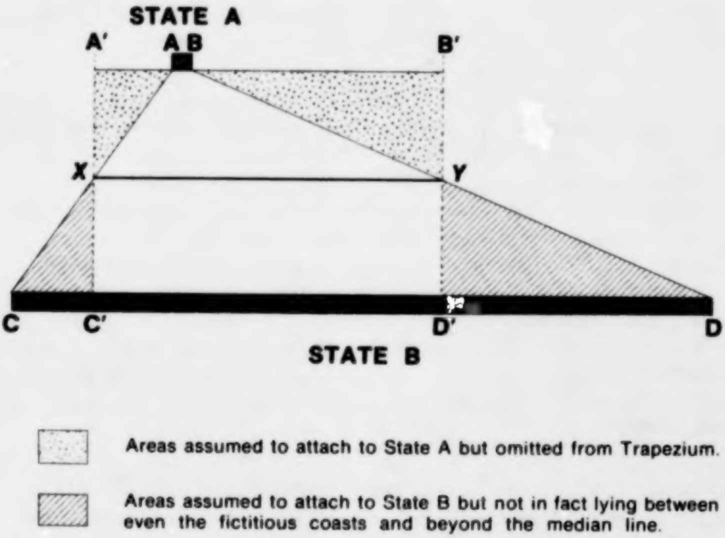
There is a further worry simply in terms of the inconsistency between the trapezium exercise and Malta's insistence elsewhere in its Memorial (especially Chapter IX) that proportionality is not applicable in the case of opposite States. The Maltese assertion, in the "third element", that the Libyan coastal length is "appropriately reflected" in the southern segment of the trapezium would seem to be an assertion about proportionality. Moreover, it is clear that the contraction or the extension of the base of the trapezium must affect the area of the trapezium and, therefore, of the two sectors of the trapezium divided by the median line. One might be forgiven for misconstruing the trapezium exercise as, in fact, an attempted demonstration of proportionality. The contradiction between this exercise and the Maltese out-and-out rejection of proportionality therefore remains an added worry.

Finally, there is the disconcerting contradiction between Malta's emphasis in paragraph 144 of its Memorial that the coast of the territory of the State is decisive factor for title to submarine areas adjacent to it and the simple fact that the trapezium exercise ignores the coasts of the
⑫ Parties. In Figure A of the Maltese Memorial the Island of Malta seems to be totally irrelevant to the shape or size of the trapezium, which, as pointed out above, depends on one point somewhere on the north coast of Gozo,
⑬ facing Sicily. In Figure B the "short coast" of State A is an entirely artificial construct, and one has no means of tracing how it relates to the actual coast of Malta. The same is true for the Libyan coast in Figure B.

However, it is necessary to set aside these worries and inconsistencies in order to concentrate on the real defects of the trapezium exercise. These defects can be stated in the form of four propositions.

(i) The trapezium in fact assumes that the Maltese coast is of equal length to the Libyan coast

In the *Figure* below, the Maltese trapezium exhibited in Figure B has been taken as the basic form. State A (Malta) has a coastline AB and State B (Libya) a coastline CD. Assuming the median line boundary (XY) to be a true median line between real, opposite coasts, the dotted lines have been inserted to complete the rectangle A'B'D'C'. The coasts which would be accurately and equitably reflected by such a median line boundary would be for Malta, A'B' and for Libya, C'D'


STATE A
A'
A B
B'
X
Y
C
C'
D'
D
STATE B
Areas assumed to attach to State A but omitted from Trapezium.
Areas assumed to attach to State B but not in fact lying between even the fictitious coasts and beyond the median line.

Thus, the trapezium "creates" an entirely fictitious coast for Malta—the line A'B'. In Malta's Figure B, State A's coast is multiplied by 15.3. At the same time Libya's actual coast is reduced from CD to C'D', being divided by 2. So much for equity not "re-fashioning nature"!

(ii) The trapezium assumes a proportionality between the two shelf areas by ignoring areas attaching to State A (Malta) and adding to State B's area (Libya's) areas of shelf which lie beyond the lateral reach of the median line and cannot be said to lie between even the fictitious coasts

As the *Figure* shown above demonstrates, in the northern (or Maltese) sector there are two large areas — indicated by a speckled or dotted pattern — which lie directly above the median line and directly between the Libyan coast and the fictitious Maltese coast which are omitted from the trapezium. They are, in effect, areas of shelf which would be assumed to attach to State A (Malta) but which are totally ignored by the trapezium.

By the same token the hatched areas in the southern sector are attached to State B (Libya) even though they lie beyond the lateral reach of the median line and could not remotely be said to lie "between" the Libyan and Maltese coasts, or even the extended, fictitious coast A'B'.

It is only by dint of excluding areas attaching to State A (Malta) and including quite extraneous areas as attaching to State B (Libya) that the median line through the trapezium is given some semblance of proportionality.

(iii) The application of the trapezium construct to the actual area in Figure A of the Maltese Memorial demonstrates that the choice of the relevant Libyan coast was determined solely by the need to accommodate the Maltese claim line

The question arises as to why Malta has chosen to regard the Libyan coast as far east as Ras at-Tin, some 316 kilometres further to the east than Benghazi, as relevant to a delimitation with Malta. The answer is, quite simply, that this was necessary to accommodate the Maltese claimed equidistance line within the trapezium.

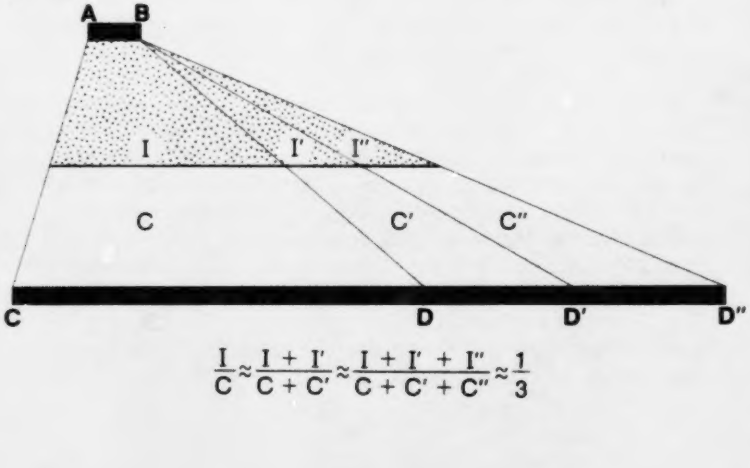
⑱ On *Map A* following this page, the Maltese Figure A has been taken as the basic figure, and a series of possible trapeziums constructed. One such could have a base as far east as Ras Zarrouq (Base A, eastern side a); another at the southeasterly extremity of the Gulf of Sirt (Base B, eastern side b); another at Tolemaide (Base C, eastern side c); and the one actually used by Malta (Base D, eastern side d). In fact even this trapezium does not quite take in the most extreme, easterly point of the Maltese claim (at point X). The reason for this awkward "gap" between the Maltese trapezium and the Maltese claim is, presumably, that any trapezium which embraced the entire Maltese claim line would have to have a base and an eastern side which met on Egyptian territory.

Thus, whilst not a perfect fit, the trapezium in Figure A is designed to embrace as much of the Maltese claim, and get as close to Point X, as possible: and the base of the trapezium had to be long enough to accommodate this extreme eastern side. It means, therefore, that Libya's "relevant" coast has no other rationale than to accommodate Malta's trapezium construct and, by that means, Malta's most easterly claim.

(iv) The trapezium construct involves determining the shelf area of State A by reference, not to the length of its own coast, but to the length of the coast of the opposite State B

It will be apparent simply from a comparison of Malta's Figures A and B that the length of State A's (Malta's) coast has virtually no effect on the shape of the trapezium and, therefore, the size of the northern sector of shelf attaching to State A. Whether State A is conceived of as a short coast or one single point makes very little difference to the shape and size of the trapezium. The element which governs is the length of the base, the coast of State B (Libya). We thus have the extraordinary situation in which Malta's shelf entitlement is to be determined by reference to the length of Libya's coast, a result so startling that one might be forgiven for forsaking the logical world of geometry and seeking refuge in common sense.

It would also seem to be the property of the trapezium that once the ratio between the lengths of the two opposite coasts is as high as 1:10, the median line will allocate the area within the trapezium in the ratio of one to three. In fact with a trapezium the exact ratio of 1:3 is achieved by a median line when the trapezium has an apex, a single point, not a line. If the ratio of the coasts is 1:10 the ratio of the areas is rather more than 1:3 (in fact it is 1.3:3.1). But as the base gets longer and the ratio of the opposite coasts gets larger than 1:10, so the ratio of areas gets closer to 1:3. Moreover, from that point on, however much the base of the trapezium is extended, the ratio will remain the same. The *Figure* below illustrates the foregoing.



$$\frac{I}{C} \approx \frac{I + I'}{C + C'} \approx \frac{I + I' + I''}{C + C' + C''} \approx \frac{1}{3}$$

Thus, whatever the length of the Libyan coast, Malta would always get one-third of the trapezium area. This conclusion equally illustrates the point that Malta's shelf area is made to depend on the Libyan coast, not Malta's own coast.

3. The Trapezium Applied to Other, Neighbouring Delimitations

If the trapezium had any validity as a proof of the equity of the equidistance method it should be possible to assume that it would be valid not only in relation to Malta's delimitation with Libya but also in relation to Malta's delimitation with Italy and Greece.

Map B following this page is an attempt to illustrate how the "proof" would operate in relation to these two States, as well as to Libya. The illustration is, of course, subject to the criticism that the choice of the bases of the trapeziums is arbitrary: but that, indeed, is the property of the trapezium exercise.

The striking feature of the illustration is that Malta, as an island with a shelf entitlement for 360° around its coasts, does remarkably well for its size. In fact, its size does not really matter.

The trapezium is obviously ill-suited to a base coastline which cannot be reduced to a straight line. With Italy, for example, the exercise scarcely works at all, for Sicily is in the wrong place and either gets embraced within the trapezium or, if excluded, prevents any trapezium being constructed to the east vis-à-vis Italy. In any event, there is an overlap between the trapeziums with Italy and Greece. Certainly this overlap could be reduced, but there is no obvious, rational test by which one could determine how much of the Greek coast should be used as the base for the Malta/Greece trapezium.

The possibility of an Italy/Greece delimitation is necessarily excluded, for Malta's opposite relationship to both Italy and Greece excludes an opposite relationship between Italy and Greece in the same area.

The conclusion must be that the trapezium exercise vis-à-vis Italy and Greece is unworkable, produces results totally inconsistent with existing delimitations, and is plainly inequitable. Why, therefore, does Malta assume that the same exercise produces a valid test of the equity of the median line vis-à-vis Libya?

VOLUME II

Part 1

ANNEX OF DELIMITATION AGREEMENTS TO THE COUNTER-MEMORIAL OF THE LIBYAN ARAB JAMAHIRIYA

INTRODUCTION

A. Organisation of the Material

1. The focus of the ensuing analysis of delimitation agreements is on delimitations of the continental shelf. It must be noted, however, that delimitation treaties vary from agreement to agreement and that the accords often refer to "maritime boundaries", "maritime frontiers", or "submarine areas", as well. Nonetheless agreements dealing exclusively with the delimitation of the territorial sea have not been included because of their marginal relevance to a case concerning the continental shelf. Nor has national legislation, which is unilateral in character, been treated in this Annex.

2. These agreements have been assembled and analysed in order to place Malta's contentions regarding State practice in proper perspective [1]. Libya has attempted not to be selective in its choice of examples of continental shelf delimitation to present to the Court. Accordingly, this review of delimitation agreements includes every example concerning the continental shelf the details of which are known to Libya. In Libya's view, it is only from such a complete analysis that the delimitation agreements can be accurately examined and proper conclusions drawn.

3. By and large this material has been arranged chronologically. Occasionally, where two States have negotiated more than one boundary or have extended an existing boundary by means of a subsequent agreement, those activities have been grouped together for ease of reference[2].

4. The discussion of each particular example has been structured in an objective fashion under common headings such as date of signature, method of delimitation specified in the agreement, length of the delimitation line and presence, if any, of third State delimitations. A brief comment has been added at the end of each example to point up factors of particular interest.

5. The analyses of the agreements are followed in each instance by a map depicting the actual course of the boundary and by the text of the agreement (in translation if the original is not in French or English). The maps used are based on the new GEBCO series of bathymetric charts

---

[1] Libya considers this body of State activities to be of limited relevance to the present case, and reserves its position regarding each of the agreements cited herein. The question of the legal relevance of this material is discussed in the Counter-Memorial, paras. 5.54 through 5.60.

[2] The agreements between Australia and Indonesia are an example. Three separate agreements were negotiated and these have all been discussed under No. 24 herein.

recently completed[1]. These offer the most up-to-date, uniform portrayal of world-wide geography coupled with the bathymetry of the bottom of the sea. Reference to these maps enables the delimitations to be viewed in their overall physical context — that is, in the context of the particular landmasses and coasts involved and of the sea-bed, unobscured by the column of water lying above. In some instances several individual delimitations have been depicted on one map in order to illustrate the relationship each bears to others in the same general area. Obvious examples of areas where numerous continental shelf delimitations have been established are in the North Sea, the Arabian-Persian Gulf and, to a lesser extent, in the Caribbean Sea and the eastern portion of the Indian Ocean.

6. Two other maps have been included following this introduction for convenience of reference. The first map shows the geographical and geomorphological setting of the present case between Libya and Malta and may be useful as a point of reference in comparing the physical characteristics of the present case to those exhibited in other situations. The second map is a map of the world designed to assist in locating the general setting of each particular delimitation agreement discussed in this Annex.

B. Emergent Themes

7. If there is any single, dominant theme that emerges from a comprehensive review of individual delimitation agreements, it is that every case is unique. This is so both factually and textually.

8. Textually, a large number of agreements do not specify the precise method upon which the delimitation was based. Of those that do give some indication of the method employed, a number refer to the use of a median or equidistance line, sometimes with an explanation that "modifications" or "adjustments" have been made. Others refer to the use of a fixed azimuth, a loxodrome, a perpendicular to the coast or a line of latitude. Still others recite the parties' desire to establish a boundary in a "just, equitable and precise manner". Some agreements indicate that delimitation was agreed in accordance with equitable principles while in several instances the agreements provide that in the particular case application of the equidistance method achieves an equitable result. In one example the agreement states that the boundary was established "on the basis of the principle of equidistance or equity as the case requires[2]".

---

[1] The maps appearing in this *Annex* have been prepared by the University of Maryland, Baltimore County under the direction of Scott B. Edmonds, Director of Cartographic Services, and are for purposes of illustration only. The "GEBCO" series (General Bathymetric Chart of the Oceans) is published by the Canadian Hydrographic Service, Ottawa, Canada, under the authority of the International Hydrographic Commission and the International Oceanographic Commission of UNESCO; 5th Series. In some instances where large scale maps have been included, coastal features have been taken from United States Defense Mapping Agency charts.

[2] See No. 52 herein.

9. What is clear is that the texts of the agreements seldom shed much light on the factors or circumstances the parties considered to be relevant in establishing a particular boundary. This only serves to highlight the fact that existing delimitations are the result of negotiation and that, consequently, the factors that played a role in an ultimate solution must remain largely the subject of conjecture. It is possible, for example, that factors totally extraneous to considerations of legal relevance to delimitation of the continental shelf may also have had an influence on the result.

10. On the other hand, it is possible to draw certain conclusions from the geographical and geomorphological context of each case. This, however, only serves to illustrate the second aspect of these agreements which makes each of them unique in its own right; that is, the factual setting of each case. To quote from an expert source in this field:

> "[E]very maritime-boundary situation is geographically unique. In this context, the term 'geographic' is utilized in the basic sense, that is, the locational arrangement and the interrelation of land and water. Factors would include, for example, the coastal configuration and relationship; the size, the presence, and the location of prominent features such as capes, bays, islands, and low-tide elevations; and relative and absolute scales and distances[1]".

11. The particularity of each delimitation example is evident from an examination of the accompanying maps. These attest to the wide diversity of settings encountered and, consequently, to the wide variety of solutions reached. The geographical and geomorphological factors are quite distinctive in each situation. This is not to say that certain parallels cannot be found. But to characterise any particular setting as normal contradicts the basic facts of geography and geomorphology. It is a term without meaning in such a context.

12. Another important theme that emerges from an examination of existing delimitations is that there is no one method of delimitation that States have felt compelled to use in every situation. A variety of solutions are encompassed by the agreements. This is hardly surprising given the multitude of factual situations States are faced with in different delimitation settings.

13. In particular, it is apparent that there has been no automatic use of equidistance and that, particularly in recent years, States have tended to employ other methods of delimitation. Even in those cases where the equidistance method obstensibly was applied, there is no indication that the States involved felt legally obligated to do so[2]. Rather, it may be seen from the maps of the individual agreements that in those cases where

---

[1] Hodgson, Robert D. and Smith, Robert W., "Boundary Issues Created by Extended and National Maritime Jurisdiction", *The Geographical Review*, Vol. 69, No. 4, Oct. 1979, p. 426.

[2] This aspect of the legal relevance of the delimitation agreements is discussed in Chapter 5 (C) (1) of the Counter-Memorial.

equidistance was utilised, the coasts of the parties have generally been of comparable length or configuration and there have been no marked geomorphological disruptions in the area to be delimited. It may be supposed that, in these cases, the States involved employed a particular method because it was simple and not contentious and produced a satisfactory result.

14. In many cases the equidistance method has evidently not been viewed as appropriate and the States have established their boundaries using other methods. At times, this has been the case even though one or more of the States involved actively supported equidistance during the Third Conference on the Law of the Sea. Spain, for example, co-sponsored United Nations Document NG 7/2 during the deliberations at the Third Conference. This did not prevent Spain from altering its stance in its continental shelf delimitation with France in the Bay of Biscay where the parties employed quite a different method to delimit the seaward portion of their shelf boundary[1]. So also did the Netherlands — a co-sponsor of Document NG 7/2 — agree with Venezuela on a delimitation around the Dutch Antilles which discarded equidistance in favour of a delimitation "based upon equitable principles" using other methods. In a similar vein, Japan's support for the equidistance method in the Third Conference did not hinder it from agreeing with the Republic of Korea on a joint development zone unrelated to equidistance in their agreement[2].

15. In short, an examination of continental shelf delimitations suggests that States have had a firm appreciation "that in international law there is no single obligatory method of delimitation and that several methods may be applied to one and the same delimitation[3]". As this Court observed in its 1982 Judgment in the *Tunisia/Libya* case:

> "The subsequent practice of States, as is apparent from treaties on continental shelf boundaries, shows that the equidistance method has been employed in a number of cases. But it also shows that States may deviate from an equidistance line, and have made use of other criteria for the delimitation, whenever they found this a better way to arrive at an agreement .... Treaty practice, as well as the history of Article 83 of the draft convention on the Law of the Sea, leads to the conclusion that equidistance may be applied if it leads to an equitable result; if not, other methods should be employed[4]".

---

[1] See No. 34 below.

[2] See Nos. 35 and 57 below. Other examples might be cited in this respect. Portions of the Italy-Tunisia and Italy-Yugoslavia agreements abandon equidistance despite the fact that Italy and Yugoslavia supported equidistance as the general method of delimitation during the Third Conference.

[3] *Continental Shelf (Tunisia/Libyan Arab Jamahiriya), Judgment, I.C.J. Reports 1982*, p. 79, para. 111.

[4] *Ibid.*, p. 79, para. 109.

16. What is also apparent from a review of the body of existing delimitations is that no example presents a geographical situation truly analogous to that in the present case. No two stretches of coast are precisely the same; nor is the relationship between two coasts in one situation exactly like that in another. Libya respectfully invites the Court to examine the map of the Libya-Malta setting which appears immediately following this Introduction and to compare that setting with each of the settings of the agreements discussed in this Annex. The diversity of situations is unmistakable.

17. Libya is confident that a review of each individual delimitation agreement disposes of Malta's contention that there exists a "cardinal principle" whereby delimitation of the continental shelf between States with opposite coasts must be by means of a median or equidistance line. To the extent that it is possible to glean information from what amount to negotiated agreements, the texts of the agreements and the maps that accompany them speak for themselves.

1. UNITED KINGDOM (TRINIDAD AND TOBAGO)—VENEZUELA

[Not reproduced]

(*Source*: International Boundary Study, Series A, *Limits in the Seas*, Office of the Geographer, Department of State, Washington, D.C., No. 11, 6 March 1970 (hereinafter referred to as "*Limits in the Seas*"))

---

2. CHILE—PERU

[Not reproduced]

(*Source: Limits in the Seas*, No. 86, 2 July 1979)

---

3. ECUADOR—PERU

[Not reproduced]

(*Source: Limits in the Seas*, No. 88, 2 October 1979)

---

4. NORWAY—SOVIET UNION

[Not reproduced]

(*Source: Limits in the Seas*, No. 17, 27 May 1970)

---

5. BAHRAIN—SAUDI ARABIA

[Not reproduced]

(*Source: Limits in the Seas*, No. 12, 10 March 1970)

---

6. GUINEA-BISSAU–SENEGAL

[Not reproduced]

(*Source: Limits in the Seas,* No. 68, 15 March 1976)

---

7. NETHERLANDS–FEDERAL REPUBLIC OF GERMANY

[Not reproduced]

(*Source:* United Nations, *Treaty Series,* Vol. 550, p. 123; *ibid.*, Vol. 857, p. 143)

---

8. NORWAY–UNITED KINGDOM

[Not reproduced]

(*Source:* United Nations, *Treaty Series*, Vol. 551, p. 213; *Atlante dei confini sottomarini,* B. Conforti and G. Francalanci (eds.), Milano, Giuffrè, 1979, p. 30)

---

9. FINLAND–SOVIET UNION

[Not reproduced]

(*Source:* United Nations, *Treaty Series*, Vol. 566, p. 31; *ibid.*, Vol. 640, p. 111)

---

10. DENMARK–FEDERAL REPUBLIC OF GERMANY

[Not reproduced]

(*Source:* United Nations, *Treaty Series*, Vol. 570, p. 91; *ibid.*, Vol. 880, p. 185)

---

11. NETHERLANDS–UNITED KINGDOM

[Not reproduced]

(*Source: International Legal Materials,* Vol. 5, 1966; *ibid.*, Vol. 11, 1972)

---

12. DENMARK–NORWAY

[Not reproduced]

(*Source:* United Nations, *Treaty Series*, Vol. 634, p. 71; *ibid.*, Vol. 643, p. 414)

---

13. UNITED KINGDOM–DENMARK

[Not reproduced]

(*Source:* United Nations, *Treaty Series*, Vol. 592, p. 207;
International Legal Materials, Vol. 11, 1972)

---

14. ITALY–YUGOSLAVIA

[Not reproduced]

(*Source: Limits in the Seas*, No. 9, 20 February 1970)

---

15. ABU DHABI–DUBAI

(Offshore Boundary Agreements between Abu Dhabi and Dubai, signed on 18 February 1968)

[Not reproduced]

---

16. NORWAY–SWEDEN

[Not reproduced]

(*Source:* United Nations, *Treaty Series*, Vol. 968, p. 235)

---

17. IRAN–SAUDI ARABIA

[Not reproduced]

(*Source:* United Nations, *Treaty Series*, Vol. 696, p. 189)

---

18. German Democratic Republic–Poland

[Not reproduced]

(*Source:* United Nations, *Treaty Series*, Vol. 768, p. 253)

19. Abu Dhabi–Qatar

[Not reproduced]

(*Source: Limits in the Seas,* No. 18, 29 May 1970)

20. Poland–Soviet Union

[Not reproduced]

(*Source:* United Nations, *Treaty Series*, Vol. 769, p. 75)

21. Iran–Qatar

[Not reproduced]

(*Source:* United Nations, *Treaty Series*, Vol. 787, p. 165)

22. Indonesia–Malaysia

[Not reproduced]

(*Source: Limits in the Seas,* No. 1, 21 January 1970)

23. Mexico–United States

[Not reproduced]

(*Source: Limits in the Seas,* No. 45, 11 August 1972;
International Legal Materials, Vol. 17, 1978, p. 1074)

78

24. AUSTRALIA–INDONESIA

[Not reproduced]

(*Source: New Directions in the Law of the Sea,* Vol. IV, ed. Nordquist *et al.*, New York, Oceana, 1975, pp. 91-94 (hereinafter referred to as "*New Directions in the Law of the Sea*"); United Nations, *Treaty Series,* Vol. 974, p. 319 and Vol. 975, p. 3)

---

25. BAHRAIN–IRAN

[Not reproduced]

(*Source:* United Nations, *Treaty Series,* Vol. 826, p. 227)

---

26. ITALY–TUNISIA

[Not reproduced]

(*Source: Limits in the Seas,* No. 89, 7 January 1980)

---

27. FEDERAL REPUBLIC OF GERMANY–UNITED KINGDOM

[Not reproduced]

(*Source:* United Nations, *Treaty Series,* Vol. 880, p. 185)

---

28. INDONESIA–THAILAND

[Not reproduced]

(*Source: Limits in the Seas,* No. 81, 27 December 1978; *ibid.,* No. 93, 17 August 1981)

---

29. INDONESIA–THAILAND–MALAYSIA

[Not reproduced]

(*Source: Limits in the Seas,* No. 81, 27 December 1978)

30. BRAZIL–URUGUAY

[Not reproduced]

(*Source: Limits in the Seas,* No. 73, 30 September 1976)

31. FINLAND–SWEDEN

[Not reproduced]

(*Source: Limits in the Seas,* No. 71, 16 June 1976)

32. ARGENTINA–URUGUAY

[Not reproduced]

(*Source: Limits in the Seas,* No. 64, 24 October 1975)

33. CANADA–DENMARK

[Not reproduced]

(*Source:* United Nations, *Treaty Series,* Vol. 950, p. 147)

34. FRANCE–SPAIN

[Not reproduced]

(*Source: Limits in the Seas,* No. 83, 12 February 1979)

35. JAPAN–REPUBLIC OF KOREA

[Not reproduced]

(*Source : New Directions in the Law of the Sea,* Vol. IV, 1975, pp. 113-132)

36. ITALY–SPAIN

[Not reproduced]

(*Source : Limits in the Seas,* No. 90, 14 May 1980)

37. SUDAN–SAUDI ARABIA

[Not reproduced]

(*Source :* United Nations, *Treaty Series,* Vol. 952, p. 193)

38. INDIA–SRI LANKA

[Not reproduced]

(*Source : Limits in the Seas,* No. 66, 12 December 1975;
ibid., No. 77, 16 February 1978)

39. FEDERAL REPUBLIC OF GERMANY–GERMAN DEMOCRATIC REPUBLIC

[Not reproduced]

(*Source : Limits in the Seas,* No. 74, 5 October 1976)

40. IRAN–OMAN

[Not reproduced]

(*Source :* United Nations, *Treaty Series,* Vol. 972, p. 265)

Part 2

41. INDIA–INDONESIA

[Not reproduced]

(*Source: Limits in the Seas,* No. 62, 25 August 1975;
ibid., No. 93, 17 August 1981)

---

42. IRAN–UNITED ARAB EMIRATES (DUBAI)

[Not reproduced]

(*Source: Limits in the Seas,* No. 63, 30 September 1975)

---

43. THE GAMBIA–SENEGAL

[Not reproduced]

(*Source: New Directions in the Law of the Sea,* Vol. VIII, 1980, pp. 104-105)

---

44. COLOMBIA–ECUADOR

[Not reproduced]

(*Source: Limits in the Seas,* No. 69, 1 April 1976)

---

45. MOROCCO–MAURITANIA

(Convention relative au tracé de la frontière d'Etat établie entre la République islamique de Mauritanie et le Royaume du Maroc, signed at Rabat on 14 April 1976)

[Not reproduced]

---

46. KENYA–TANZANIA

[Not reproduced]

(*Source: Limits in the Seas,* No. 92, 23 June 1981)

---

47. CUBA–MEXICO

[Not reproduced]

(*Source:* The text of the Agreement is taken from the *Maltese Memorial*, Annex 23)

48. COLOMBIA–PANAMA

[Not reproduced]

(*Source: New Directions in the Law of the Sea,* Vol. VIII, 1980, pp. 88-92)

49. INDIA–MALDIVES

[Not reproduced]

(*Source: Limits in the Seas,* No. 78, 24 July 1978)

50. COLOMBIA–COSTA RICA

[Not reproduced]

(*Source: New Directions in the Law of the Sea,* Vol. VIII, 1980, pp. 93-96)

51. ITALY–GREECE

[Not reproduced]

(*Source: Limits in the Seas,* No. 96, 6 June 1982)

52. CUBA–HAITI

[Not reproduced]

(*Source: New Directions in the Law of the Sea,* Vol. VIII, 1980, pp. 69-75)

53. CUBA—UNITED STATES

[Not reproduced]

(*Source: New Directions in the Law of the Sea,* Vol. VIII, 1980, pp. 66-68)

---

54. COLOMBIA—DOMINICAN REPUBLIC

[Not reproduced]

(*Source: New Directions in the Law of the Sea,* Vol. VIII, 1980, pp. 78-79)

---

55. COLOMBIA—HAITI

[Not reproduced]

(*Source: New Directions in the Law of the Sea,* Vol. VIII, 1980, pp. 76-77)

---

56. UNITED STATES—VENEZUELA

[Not reproduced]

(*Source: New Directions in the Law of the Sea,* Vol. VIII, 1980, pp. 84-87)

---

57. THE NETHERLANDS—VENEZUELA

[Not reproduced]

(*Source: Tractatenblad van het Koninkrijk der Nederlanden,* 1978, Nr. 61. [Unofficial translation of the Spanish text.])

---

58. INDIA—INDONESIA—THAILAND

[Not reproduced]

(*Source: Limits in the Seas,* No. 93, 17 August 1981)

---

59. INDIA—THAILAND

[Not reproduced]

(*Source: Limits in the Seas,* No. 93, 17 August 1981)

---

60. AUSTRALIA–PAPUA NEW GUINEA

(Treaty between Australia and the independent State of Papua New Guinea, signed at Sydney on 18 December 1978)

[Not reproduced]

---

61. DOMINICAN REPUBLIC–VENEZUELA

[Not reproduced]

(*Source: New Directions in the Law of the Sea*, Vol. VIII, 1980, pp. 80-83)

---

62. DENMARK–NORWAY

[Not reproduced]

(*Source:* United Nations, Secretariat, Treaty Section. The English translation of this Agreement is reproduced from the *Maltese Memorial*, Annex 20)

---

63. FRANCE–TONGA

[Not reproduced]

(*Source: Journal officiel de la République française*, 11 January 1980)

---

64. COSTA RICA–PANAMA

[Not reproduced]

(*Source: Limits in the Seas*, No. 97, 6 December 1982)

---

65. FRANCE–MAURITIUS

[Not reproduced]

(*Source: Limits in the Seas*, No. 95, 16 April 1982)

---

66. UNITED STATES–COOK ISLANDS

[Not reproduced]

(*Source:* U.S. Congress, Senate, 96th Cong., 2d Session, Executive P. (3 Sep. 1980))

---

67. FRANCE–VENEZUELA

[Not reproduced]

(*Source: Journal officiel de la République française,* 16 March 1983, p. 782)

---

68. NEW ZEALAND–UNITED STATES

[Not reproduced]

(*Source:* U.S. Congress, Senate, 97th Cong., 1st Session (25 March 1981), Treaty Doc. No. 97-5)

---

69. FRANCE–SAINT LUCIA

[Not reproduced]

(*Source: Journal officiel de la République française,* 4 March 1981, p. 1608)

---

70. ICELAND–NORWAY

[Not reproduced]

(*Source: International Legal Materials,* Vol. XXI, November 1982, pp. 1222-1226)

---

71. FRANCE–AUSTRALIA

[Not reproduced]

(*Source: Journal officiel de la République française,* 15 February 1983, p. 562)

VOLUME III

DOCUMENTARY ANNEXES (with pocket section of maps) TO THE COUNTER-MEMORIAL OF THE LIBYAN ARAB JAMAHIRIYA

Annex 1

LIBYAN LAW NO. 66 OF 1973

[Arabic text not reproduced]

(Unofficial Translation)

LAW NO. 66 OF 1973

Concerning the Nationalization of 51 per cent of the Operating Companies[1]

In the Name of the People

The Revolutionary Command Council

Having regard to the Constitutional Declaration No. 1 issued on 2 Shawwal 1389 corresponding to 11 December 1969; and to:

the Petroleum Law No. 25 of 1955 and the laws amending it;
the Law No. 24 of 1970 on the N.O.C. and laws amending it;
the commercial law;
the Law No. 65 of 1970 concerning certain provisions related to merchants and commercial companies and their supervision;
the Law No. 44 of 1973 concerning the nationalization of 51 per cent of Occidental Libya Co.;
the Law No. 51 of 1973 on the approval of the Joint Venture Agreement between the Libyan Government and Amerada Libya Petroleum Corp. and Continental Libya Petroleum Co. and Marathon Libya Petroleum Co. Ltd. and the agreement concluded between the Government and those companies of 12 Rojab 1393 corresponding to 11/8/1973; and to the oil Concessions Agreements Nos. 3, 4, 5, 6, 7, 9, 10, 11, 12, 13, 14, 15, 16, 17, 20, 25, 27, 28, 29, 31, 32, 33, 42, 43, 44, 45, 46, 47, 50, 51, 57, 59, 62, 71, 72, 73, 83, 119, 120, 124, 125, 126, 131, 132, 133 and relevant amending and supplementary agreements; and to the Prime Minister's recommendation and the consent of the Council of Ministers:

Do hereby issue this law.

---

[1] *The Official Gazette of the Libyan Arab Republic*, issue No. 43 of 11 Shawwal 1393, corresponding to 6 November 1973, "the eleventh Year".

Article 1

51 per cent of all properties and privileges, assets, shares activities and interests in any form owned by the following oil companies and related to oil concession agreements shown against the name of each company, shall be nationalized and transferred to the State.

1. Esso Standard of Libya Incorporated. Concession Agreements Nos. 3, 4, 5, 6, 7.
2. The Libyan American Petroleum Company and Grace Oil and Esso Sirte Company Inc. Concession Agreements 16, 17, 20.
3. Shell (Libya) Exploration and Production Company (Libya) N.V. Concession Agreements Nos. 25, 27, 28, 29, 31, 32, 33, 59, 71.
4. Mobil Oil (Libya) Inc. and Gelsenberg (Libya). Concessions 9, 10, 11, 12, 13, 14, 15, 50, 57, 62, 72, 124, 125, 126.
5. Texaco Oil Overseas Co. and California Asiatic Oil Company. Concessions Agreements Nos. 42, 43, 44, 45, 46, 47, 51, 73, 119, 120, 131, 132, 133, 83.

This shall include in particular all properties and facilities pertaining to exploration, drilling, crude oil production, natural gas and its derivatives, transport, utilization, purification, storage, export including wells and joint production fields, pipelines, storage reservoirs, pipelines and terminals, and other assets and rights. The natural gas plant and its derivatives of Esso Standard is not included among the nationalized properties and privileges, and shall continue in its present position prior to the enforcing of the provisions of this law.

All companies whose rights are nationalized referred to in this Article shall be alone held responsible for all their obligations, debts and any claims made by any person, or any liability to any person related to the activities of such companies prior to enforcing this law. The government shall in no way be held responsible for such debts, liabilities or claims.

Article 2

In lieu of funds, rights and assets passed to the State in accordance with Article 1, the State shall pay to the companies concerned a compensation. The said compensation shall be determined by a committee or committees to be established by a decision issued by the Minister of Oil, in the following manner:

A. A Counsel from the Appeal Court to be nominated by the Minister of Justice, as Chairman.
B. A representative of the National Oil Corporation to be nominated by the Minister of Oil as a member.
C. A representative of the Ministry of Treasury to be nominated by the Minister of Treasury, as a member.

In achieving its mission, the committee may be assisted by officials or others whenever it deems necessary.

Article 3

By virtue of a resolution issued by the Minister of Oil, a committee or committees shall be appointed to carry out the inventory and taking over of the nationalized funds and assets of the nationalized companies. The decisions of such committee/s shall be approved by a decision issued by the Chairman and Director General of the National Oil Corporation.

Article 4

The local manager of each of the above referred companies shall prepare a declaration showing the financial position of the companies as on the day preceding the effective date of this law based upon the books of the companies. The declaration shall be forwarded to the companies' accounts department of the Ministry of Oil for revision for the purpose of performing its tasks, the said department may request the companies to provide any clarification or documents, and shall forward the declaration accompanied by its remarks to the Minister of Oil.

Article 5

By virtue of a decision issued by the Minister of Oil, any contract, commitment or any legal relation of any form that may affect the value of the nationalized funds and rights or the continuation of which may affect the appropriate conditions for operation or investment may be cancelled.

Article 6

The funds, assets and rights of the companies owned by the State in accordance with the provisions of Article 1 shall be transferred to the National Oil Corporation.

Article 7

The areas of the nationalized concessions shall be invested by the National Oil Corporation in participation with the companies referred to in Article 1, with the corporation's participation share being 51 per cent thereof, and that of the companies being 49 per cent of.

The operation will be conducted by the company operating actually before executing this law. By way of a decision issued by the Minister of Oil, a management committee shall be appointed for this company comprising three members, two including the Chairman thereof to represent the Government, the third represents the company. The local manager of the operating company shall be considered a member of the management committee unless the company appoints another as a member in the said committee.

The said committee shall be responsible for managing the affairs of the company, represent the company with other parties as well as before the courts, in addition to controlling operations in the nationalized areas. The committee's decisions shall be taken by a majority vote, its decisions shall become effective upon issue.

These committees will be defined as follows:

1. Management committee for Esso Standard Libya as the company actually operating on its own and on behalf of Esso Sirte, Grace and Libyan American.
2. Management committee for Mobil Oil Libya Ltd. as the company actually operating on its own and on behalf of Gelsenberg A.G.

Article 8

Amoseas Company shall continue its present activities as an operating company on behalf of Texaco Overseas and California Asiatic Oil Company and the

National Oil Corporation being owner of 51 per cent of the shares of both said companies according to the provisions of this law. The operating company will have a board of directors to be formed by a decision of the Minister of Oil of three members, two representing the Government, one of whom is the Chairman and General Director, and the third represents the two said companies. The local manager of the operating company will be considered as a committee's member unless the two companies appoint another. The board of directors will be responsible for the administration of the company concerning its activities in the Libyan Arab Republic and to represent it in its relations with third parties and before the courts. The decisions of the board are issued by the majority of its members and are considered effective as soon as issued. The board of directors may authorize one of its members or one of the company's employees to exercise certain of its competences. The operations will be subject to the control of a management committee to be formed and to issue its decisions in accordance with the situation stated in the aforesaid Article.

The Minister of Oil may at the beginning of January 1975 transfer this company to a non-profit-making Libyan company, totally owned by the N.O.C. to operate nationalized areas on behalf of the N.O.C. and the other two companies mentioned in this Article.

Article 9

Shell Exploration and Production Co. (Libya) N.V. shall be considered, according to this law, as joining the second party of the Participation Agreement between the Libyan Government and Amerada Petroleum Corp. of Libya, Continental Petroleum Co. of Libya, Marathon Petroleum Co. of Libya Ltd. mentioned above and be engaged before the Libyan Government and the N.O.C. in all the obligations stated in respect of the second party of this agreement.

Article 10

The parent companies to the Companies referred to in Articles 1, 7, 8 and 9 and their affiliates shall undertake to continue providing the services usually rendered to the operating companies specified in the Articles referred to above whenever requested by the management committee or the board of directors referred to in these Articles.

The services prescribed in the preceding paragraph shall include the technical, financial, economic, advisory or legal services, in addition to providing the expertise and training as well as other services relating to the nationalized activity.

Article 11

The National Oil Corporation and the companies referred to in Article 1, each in proportion to their respective share, as prescribed in Articles 1 and 7 shall pay to the State treasury, through the Ministry of Oil, all the fees, rents, royalties, income taxes, and surtaxes due therefrom as from the effective date of this law, in accordance to the provisions of the Petroleum Law, the concession agreements referred to above and the agreements amending, supplementing and relating thereto.

These companies shall continue to pay the supplementary payment referred to in the Agreements amending the concessions of September 1970, March 1971, May 1972, and June 1973, due on each exported barrel of crude oil exported and owned by these companies according to their remainder share in the participation provided that such a supplementary payment shall be 204.08 per cent for the same present ratio for each barrel so that the government revenue for present supplementary payment will be stable without change and unaffected as a result of the implementation of the present law.

Article 12

The National Oil Corporation and Companies referred to in Article 1 shall be from the effective date of this law and each in proportion to its participation share as prescribed in that Article have an undivided and indivisible share of the crude oil and other hydrocarbons produced, and shall have the right to dispose of their share in the way they deem appropriate and shall continue lifting and exporting the share of the corporation for a period of one month effective from the date this law comes into force, pursuant to the option of the corporation. During this month an agreement should be made between the two parties to make arrangements for lifting the corporation's share or a portion thereof including the prices and volumes which are being lifted and prices of volumes which have been lifted during the period of one month above mentioned. In the event an agreement is not reached during such period an adjustment of cargos lifted by the companies from the corporation's share should be made on the basis of compensating the corporation for cargos exported by the companies by giving the corporation additional monthly cargos at a rate not less than 10 per cent of the cargos not lifted by the corporation until such time the corporation shall obtain its share.

Article 13

The employees and workers of the companies referred to in Articles 1, 7 and 8 shall continue to perform their duties in compliance with their respective appointment and their current employment contracts, and no one may leave his work or refrain therefrom unless relieved by a decision issued by the management committee or board of directors referred to in the mentioned Articles.

Article 14

Any contract, act or decision taken, concluded or carried out in contradiction with the provisions of this law shall be deemed void and Banks, corporations or individuals are prohibited to pay any amount or settle any claim or commitment due by the parties mentioned in this law except with the approval of the management committee or board of directors referred to in Articles 7 and 8 of this law.

Article 15

Whoever commits an offence in contradiction with any of the provisions of this law shall be subject to imprisonment for a period not exceeding two years and a fine not excessing five hundred Dinars or any of those penalties.

Whoever fails to comply with the provisions of the preceding Article shall be sentenced to pay an amount equivalent to three times the amount lost by the State as a result of his offence.

Article 16

The Minister of Oil shall execute this law, which shall come into force as from the date of its issue, and shall be published in the official gazette.

The Revolutionary Command Council
(Signed) Major Abdussalam AHMED JALLOUD,
Prime Minister.

Ezzidin EL MABROUK,
Minister of Oil.

1 September 1973.

Annex 2

PETROCONSULTANTS S.A., PAGE 1 OF *FOREIGN SCOUTING SERVICE, MALTA*, JULY 1980, AND PAGE 5 OF *ANNUAL REVIEW 1979, MALTA*, JANUARY 1980

[1]

Petroleum Rights

Eight offshore blocks (7,471 sq km) are still valid over the Medina Bank area, some 150 km SE in average of the island and partly conflicting with a Libyan award.

Rightholders are Amoco (three blocks), Texaco (four blocks) and the Elf Aquitaine-Optr/Hispanoil/Wintershall/Cities Service group (one block).

Exploration

In late 1979-early 1980 the Government announced plans made on the advice of the UN for a marine seismic program to the north of the Island, but any information on possible operations is now considered as confidential.

Last reported activity in Malta was a marine seismic survey completed during 1975 over the Joc Oil Medina Bank blocks (transferred last year to Amoco).

Wildcat Drilling

Government Gives Green Light for Medina Bank Drilling. In the absence of an agreement with Libya for an offshore boundary over the Medina Bank area, the Government has asked all rightholders to proceed with their drilling plans.

It is recalled that all Medina Bank blocks were granted during 1974; a Libyan award made at the same time to Exxon partly overlapped blocks 4 and 9 (Texaco), block 16 (Elf Aquitaine group) and blocks 10, 11, 14 (now Amoco).

In 1976 the two countries had agreed to take the problem to the International Court of Justice of The Hague; however no action was subsequently undertaken by Libya which does not accept a division in equal parts (median line principle) in view of its more extended coastline.

In 1977 all commitments over the Medina Bank rights were suspended, pending accord with Libya.

[5]

Last exploration activity in Malta was a marine seismic survey completed in 1975 over Joc Oil's Medina Bank blocks.

This shows a renewal of interest for offshore areas of the Sicilian Channel where promising oil finds have been made recently in Italian waters. In the Maltese part of the Sicilian Channel, rights were held until 1976 by two groups: Shell/Agip which drilled two wildcats (MS-A1, MS-A2) and Home which drilled one wildcat (Malta 1). It is believed that both MS-A1 and Malta 1 had the Triassic (producing at Ragusa and Gela in nearby Sicily) as their objective, while the other well only explored Tertiary formations. No positive results were reported, and no further drilling was carried out in Malta after 1973.

Enclosure: Synopsis Map (1 : 500,000).

Annex 3

PAGES 109 AND 110 OF RENÉ-JEAN DUPUY, *L'OCÉAN PARTAGÉ*

[Not reproduced]

Annex 4

PAGE 341 OF MOREL, "CARACTÈRES HYDROLOGIQUES DES EAUX ÉCHANGÉES ENTRE LE BASSIN ORIENTAL ET LE BASSIN OCCIDENTAL DE LA MÉDITERRANÉE"

à 150 mètres, le courant apparaît maximal (6 cm s^{-1}) entre les immersions 300 et 500 mètres, là où les caractéristiques de l'eau intermédiaire sont d'ailleurs les plus marquées. Dans ces conditions le flux de l'eau sortante à travers ce chenal est de l'ordre de 0,6 à $0{,}8.10^6$ m^3 s^{-1}, la marge donnée tient compte à la fois de l'incertitude sur les positions des stations (rapprochées) et sur l'imprécision des extrapolations nécessaires pour établir jusqu'à 800 mètres le profil de courant.

En considérant que la base de la couche d'eau d'origine atlantique est délimitée par l'isohaline 37,50 ‰, la coupe de la figure 13a permet d'en connaître l'épaisseur, sitôt contourné le cap Bon. Par planimétrie sur cette coupe, on peut en déduire que le flux vers l'Est de 10^6 m^3 s^{-1} implique pour la couche une vitesse moyenne perpendiculaire à la coupe de l'ordre de 0,2 nœud, ce qui en tout état de cause n'est pas invraisemblable.

Annex 5

PAGE 6 OF BUROLLET, "STRUCTURE AND PETROLEUM POTENTIAL OF THE IONIAN SEA"

(b) *The Sidra Rise*. Descending evenly from the coast to the abyssal plain, it is broken by numerous faults. If the Senonian and the Cenozoic show pelagic facies and gaps, the underlying terrains could have all the facies possible. Here a large field open to exploration as the technology progresses. By its morphological aspect and its geographical position, this rise represents a natural prolongation of Libya and should then in all likelihood come under the jurisdiction of this country.

(c) *The Cone of Messina*. This is a complex grouping of weage overthrust on the Northwest of the abyssal plain with patterns of slide and olistolithes. It is hard to know if the allochtonous componiente are thick or not and what their arrangement is; Mount Alpheo shows a structure that is almost tabular with Mesozoic layers, probably Jurassic, surmounted by a Lower Pliocene marine clay. According to the seismic profiles most of the allochtonous units were deposited before the Messinian evaporites. If this fact were to be confirmed that would situate it a little before the last massive slides to the south of Sicily or of the foretrench of the Molise and of the Adriatic. It is possible that there are however more recent olistolithes. The internal arrangement and the thickness of the allochtone has to be known more precisely before we know whether this sector might be of petroleum interest, in the wedges or below. This seems however unlikely.

(d) *The Mediterranean Ridge*. This large grouping of folds and external wedge located in front of the Hellenics could be worthwhile in terms of oil of the "foot hills" type, either by itself or in its autochtone substratum in the southern sectors. The main snag now remains at present its character that is impermeable to seismic waves. At the limit of shelf of the African platform and the fore-folds, of Alpine type, this zone resembles in certain ways to numerous productive areas around the globe. Before any possible evaluation can be make the seismic handicap has to be overcome. As for the abyssal plain of the Cone of Messina, the autochtone substratum will only be of interest if it belongs to the thrusts of the African platform and if it is not at an exaggerated depth. We can on the other hand hope to find large structural elements there.

In conclusion, the Ionian Sea could hide large targets. Its exploration will require various advances:

- A better comprehension of the deep structure.
- Improvement in seismics to obtain images under the evaporites and in the overthrust sectors.
- Development of a technology allowing drilling in 3 or 4000 metres of water with the requisite safety.

Annex 6

PAGE 9 OF OPEC, *ANNUAL STATISTICAL BULLETIN 1981*

[Not reproduced]

Annex 7

GOVERNMENT OF MALTA, PAGE 7 OF *ECONOMIC SURVEY*, AUGUST 1981 AND "BASIC STATISTICS", *ECONOMIC SURVEY*, MAY 1982

SECTORAL CONTRIBUTION TO GROSS DOMESTIC PRODUCT
(at factor cost)

£M million

	1979		1980		1981
	Jan/ June	July/ Dec	Jan/ June	July/ Dec	Jan/ June
DIRECT PRODUCTION					
Agriculture and fisheries	5.4	6.1	6.5	6.8	7.8
Manufacturing	43.0	45.1	50.6	50.9	52.2
Ship repair and shipbuilding	6.5	5.4	7.2	6.6	9.6
Construction and quarrying	6.8	6.7	7.7	8.0	9.3
Public utilities*	6.1	5.6	7.6	7.9	8.7
MARKET SERVICES					
Transport and communications	6.0	8.7	7.5	14.0	9.5
Wholesale and retail trades	21.5	24.3	25.0	26.0	27.5
Insurance, banking and finance	4.6	5.5	7.2	8.1	8.1
Private services	12.9	15.2	16.2	17.4	17.9
Property income	8.7	10.5	9.4	12.0	12.1
NON-MARKET SERVICES					
Public administration	19.0	19.7	22.4	22.1	23.3
British military services	0.4	—	—	—	—
GDP at factor cost	140.9	152.8	167.3	179.8	188.0

* Includes electricity, postal services, telecommunications, gas, water and milk marketing.

Whilst the majority of industrial groups within the manufacturing sector showed gains in the value of production, four groups registered shortfalls. A major drop in production was registered by textiles and clothing: the main contributory factor for the decline being the fall in sales in export markets. Whereas in the comparable period in the previous year the production value of this sector had shown a gain of more than £M7 million, during the first six months of the year under review, textile and clothing firms registered an almost equivalent decrease in production of around £M6.9 million.

Another group of industries showing a fall in the value of output — though on a much more moderate scale — was that engaged in the production of "machinery" items. The decline registered in these activities was about £M0.9 million and was mainly attributable to the closure of two major firms, namely, Plessey Components (Malta) Ltd and General Instruments. A firm engaged in the manufacture of rubber goods also showed a decline in production of around £M0.4 million. An almost equivalent loss was recorded in the chemicals sector, mainly attributable to lower output by one pharmaceutical firm.

Manufacturing industries showing a vigorous growth rate (of around 60 per cent) were those producing footwear: the rate of increase in output value in this sector contrasted significantly with its performance in the comparable period in the previous year when this activity had not even managed to maintain the value of output reached in the first six months of 1979. Another sector registering higher production — whereas in the previous comparable period it had shown a static position — was that engaged in the manufacture of paper and printing products: the value of production in this activity rose by around £M1.8 million entirely due to higher exports of security printing. Manufacturing firms in the food sector also displayed an increase in production value (of around 8 per cent) whereas in the corresponding period in the previous year production had suffered a loss in value terms of about 3 per cent.

Manufacturing firms in the beverages industry practically maintained the growth rate experienced in the previous year (around 18 per cent). In absolute terms, the value of output of these firms advanced by some £M0.8 million. A good rate of increase in production value was registered as well in tobacco manufacturing: the value of production increased, in fact, by almost £M0.9 million compared to an advance to around £M1 million in the first six months of 1980.

Other increases in output value related to furniture making and the production of non-metallic minerals, which during the first six

BASIC STATISTICS

	Reference period	Units	
POPULATION	1981	Number	320,550
Inhabitants per sq. km.	1981	Number	1,014
Net average annual increase	1976 to 1981	%	1.01
EMPLOYMENT Total	1981	Number	116,223
of which Direct production (1)	..	% of total	44.6
Market services (2)	..	..	32.7
Non-market services (3)	..	..	22.7
UNEMPLOYMENT Total	1981	Number	6,644
of which Part I	..	..	5,680
Part II	..	..	964
GROSS DOMESTIC PRODUCT at market prices	1981	£M million	432.6
Average annual volume growth (4)	1976 to 1981	%	8.7
Per capita	1981	£M	1,350
GROSS FIXED CAPITAL FORMATION	1981	£M million	114.5
of which Machinery and equipment	..	..	59.7
Construction	..	..	40.0
Inventory changes	..	..	14.8
Average annual volume growth (4)	1976 to 1981	%	11.0
GROSS SAVING RATIO (5)	1981	% of GDP	27.3
GENERAL GOVERNMENT			
Current expenditure on goods and services	1981	£M million	76.2
Current expenditure on goods and services	..	% of GDP	17.6
Total expenditure	..	£M million	192.4
Total revenue	..	..	204.7

Annex 8

PAGE 1 OF *MALTESE DEVELOPMENT PLAN 1981-1985*

PART I. THE DEVELOPMENT RECORD

A HISTORICAL PERSPECTIVE

Malta's Fifth Development Plan 1981-85 charts the country's development strategy for the first half of the eighties. The development of a nation however cannot be properly analysed over a period as short as five years and the years 1981 to 1985 should be looked at in the wider perspective of Malta's change and progress during the second half of the twentieth century.

INTRODUCTION

Since the early fifties when the people of Malta became increasingly conscious of the need to detach the country's way of life from its secular dependence on the island's strategic value in the Mediterranean, national economic policies have been consistently geared towards the long-term development goal of a new economic structure. This process has, on the whole, registered a considerable degree of success which has even surpassed initial expectations.

During the last twenty-five years the Maltese economy has experienced a major transformation. This rapid growth is confirmed by various economic indicators which traditionally constitute the yardstick of development. The productive base of the economy has expanded with the creation of an export-based industrial sector, a large-scale tourist industry and a successful switch to commercial ship repairing. Other economic sectors have been modernized and national income has risen sharply. General economic expansion has in turn been accompanied by improved living standards. Moreover, there has been a more equitable distribution among the population of the benefits arising from the deployment of national resources.

These achievements are in themselves concrete proof that the development strategy which has been adopted has given good results. If duly strengthened and reinforced, it holds good prospects of further growth as it continues to unfold.

The underlying objective of Malta's economic strategy has been to accelerate the growth rate through new forms of economic activity to replace the gains derived from the traditional foreign military presence. With the closure of the foreign military facilities on the island in March 1979, Malta's economic objectives should now however be viewed in a broader, longer- . . .

Annex 9

PAGE 139 OF WORLD BANK, *WORLD DEVELOPMENT REPORT, 1981*

[Not reproduced]

Annex 10

PAGE 54 OF SECRETARIAT OF PLANNING, *SUMMARY OF THE SOCIO-ECONOMIC TRANSFORMATION PLAN 1981-1985*

It is estimated that the population of the S.P.L.A.J. will increase from about 3,245,800 in 1980 to about 3,960,800 in 1985 or at an annual compound growth rate of 4.1 %. Meanwhile, it is expected that the non-Libyan population will increase from about 441,200 in 1980 to about 549,600 in 1985 or at an annual compound growth rate of 4.5 %. The proportion of non-Libyan population will be about 13.9 % of the total population in 1985. It is also estimated that the number of Libyan population will increase from about 2,804,600 in 1980 to about 3,411,200 in 1985 or at an annual compound growth rate of 3.9 %.

Table 18

ESTIMATES OF POPULATION FOR 1980/1985

(in thousands)

Population	*1980*	*1985*	*Annual compound growth rate* 1980/1985 (%)
Total Libyan and non-Libyan population	3245.8	3960.8	4.1
Libyans	2804.6	3411.2	3.9
Non-Libyans	441.2	549.6	4.5
Proportion of non-Libyans to total population (%)	13.6	13.9	—

As regards the estimated number of manpower, it is expected to increase from about 812,800 in 1980 to about 1,061,800 in 1985 or at an annual compound growth rate of 5.5 %, while the number of Libyan manpower will increase from about 532,800 in 1980 to about 678,400 in 1985 or at an annual compound growth rate of 5 %. It is estimated that the number of non-Libyan manpower will increase from about 280,000 in 1980 to about 383,400 in 1985 or at an annual compound growth rate of 6.5 %. It is expected that the proportion of non-Libyan manpower to total employment will increase from about 34.4 % in 1980 to about 36.1 % in 1985.

Annex 11

PAGE 39 OF METWALLY, *STRUCTURE AND PERFORMANCE OF THE MALTESE ECONOMY*

. . . turing price index. Incomes from Government enterprises, wholesale and retail trade, insurance, banking and real estate, Public Administration, Military Services and Private Services were deflated using the Services price index.

Source: See method of estimation in Appendix 2-2. The Data used are derived from the National Accounts of Malta and the Annual Abstract of Statistics.

Table 2-1 contains an enormous amount of information and we devote the rest of this chapter to analyse this information.

(1) The Maltese population does not seem to have changed significantly in size in the last two decades. The trend, however, seems to be of a declining nature. Thus the rate of growth of this variable was reduced from 0.35 per cent during the period 1954-60 to 0.06 per cent and to −0.43 per cent during the periods 1961-70 and 1971-74 respectively. This decline in population would seem to be largely due to a decline in birth rates. It is doubtful, however, whether this decline in birth rates is due to an unfavourable assessment on the part of the parents (and persons intended to get married) of the economic future of the country. The decline in birth rates is more likely to be due to socio-economic and institutional factors (e.g., influence of tourism and improvement in communication; introduction of marriage counselling).

(2) The Gross domestic product (at factor cost) increased, in real terms, by 4.24 per cent over the last two decades. The highest rate of growth, however, would seem to have occurred during the period 1961/70 and the lowest during the period 1971/74. The point is that, if the Maltese Economy continues to grow at 4.24 per cent per annum, it . . .

Annex 12

PAGE 84 OF *MALTA HANDBOOK 1981* AND PAGE 125 OF *MALTA HANDBOOK 1977*

FISHERIES

The fishing grounds of the Maltese traditional fishermen are within a radius of 160 Km from the shore of the Maltese Islands. Fishery activities consist of kannizzati, trawling, long lining for swordfish, purse screening and bottom long lining. For inshore fishing other types of gear such as trammel and gilling nets and pots are also used. In view of rough seas during the winter months, the catch during this season is only about one-fifth of that prevalent during the late summer and late autumn. An appreciable amount of fish landed yearly consists of good quality fish such as swordfish, blue fin tuna, red bream and stone bass.

The Maltese Government's plans are to expand the fisheries industry in order to meet the local demand for fish and shell-fish to the greatest possible extent from local sources. The Government also seeks to ensure that an adequate supply of fish is available all the year round, to promote a higher consumption of fish in the local diet, and to reduce or do away altogether with fish imports.

Accordingly, besides the establishment of the trawler fishing fleet operated by the Maltese Libyan Arab Fishing Company Ltd., the Government continued to extend assistance to individual fishermen. Help is provided to enable fishermen to build bigger fishing craft and to replace worn out engines besides assistance in the purchase of bait and tackle as well as fuel at a lower price than that charged commercially.

In the first nine months of 1980 a total of around 730 tonnes were caught by traditional fishermen and the trawlers operated by the Maltese Libyan Arab Fishing Company Ltd. The wholesale and retail values of fish landed during these months were £M0.7 million and £M0.8 million respectively.

Wholesale Value and Weight of Locally Caught Fish

1960 — 1979

	Catch (Kgs)	Wholesale Value £M
1960	1,236,523	227,000
1961	1,372,006	236,600
1962	1,338,224	248,800
1963	1,514,602	283,200
1964	1,369,263	324,100
1965	1,299,210	334,900
1966	1,296,416	319,500
1967	1,504,747	346,000
1968	1,202,538	341,000
1969	1,156,259	320,300
1970	1,162,014	378,300
1971	1,244,397	430,491
1972	1,175,766	453,482
1973	1,591,412	543,184
1974	1,512,824	705,318
1975	1,494,784	714,221
1976	1,534,756	770,322
1977	1,448,017	896,803
1978	1,064,161	772,456
1979	1,305,549	954,570

FISHERIES

Most fishery activities take place within 100 miles off the Maltese Islands for the migratory pelagic type usually found in the Central Mediterranean. The bulk of the fish usually landed between September and November consists of dolphin fish (lampuki) and pilot fish (fanfri). About one third of the catch during May, June and July consists of mackerel, bogue and scad. The swordfish type of fishing has gained popularity with an increasing number of fishermen. Fish is scarce during the winter months and availability reaches only about one-fifth of that prevalent during the late summer and late autumn.

During 1976 the fishing industry occupied 895 motor and 139 other fishing vessels engaging 440 full-time and 567 part-time fishermen. In the same year fish landings rose by 48,800 kgs. to 1,541,700 kgs. The retail value of the fish caught rose by £M43,099 to £M915,282.

Government provides assistance to fishermen to help them build their fishing boats, replace engines and to buy bait and tackle as well as fuel at a low price. Cold stores have recently been built and a refrigeration plant installed in Gozo for the storage of fish.

Through the aid of the United Nations Development Programme and with the cooperation of the Libyan Arab Republic, the Government has set up a fleet of trawlers capable of all-year round fishing in waters which the traditional fishermen cannot reach. Experts were brought to train Maltese on these trawlers. Catches increased and the importation of fresh fish decreased strongly in 1974 and in 1976 was stopped completely.

It is expected to expand this project through foreign aid, in order to be able to provide the market with more and more fresh fish increasing the average consumption per head to levels comparable to other Mediterranean countries. The project would also provide employment opportunities on a co-operative and collecting basis.

Annex 13

PAGE 149 OF MALTA, *GUIDELINES FOR PROGRESS (DEVELOPMENT PLAN 1981-1985)*

induce cooperative societies to expand and diversify their range of activities as well as to improve their organizational structure. This will increasingly enable members to benefit more fully from their own activities.

The Government will encourage further development of cooperative attitudes in the agricultural sector in a way that effectively combines self-interest and group-interest by allowing self-interest of individuals to become a driving force in group action. While individual initiative by farmers and producers will at all times be backed by state encouragement and support, the Government will actively seek to promote cooperative forms of joint endeavour. This is possible in such activities as the purchase of farm inputs, marketing, and utilisation and maintenance of farm equipment since in view of the constraints which handicap Maltese agriculture, such cooperative forms of action will enable small individual farmers to benefit, to some extent, from the advantages of scale through larger groupings.

FISHERIES

The main objective for the development of the fishing industry during the eighties is to meet the demand for fish to the fullest extent possible from local sources. Full scope exists for the pursuit of this objective since half of Malta's current fish consumption is satisfied by imports of frozen or canned fish. The Maltese Islands, situated in the centre of the Mediterranean Sea, should be able to develop a technically efficient and economically viable fishing industry. Action in this direction was started during the fourth plan. All future efforts should be directed towards the fuller exploitation of the fisheries resources generally accessible to the Maltese Islands.

The objectives of the fisheries development programme for the eighties are:

- the increase of the fish catch to satisfy demand for fish products by the population as well as the demand for quality fish and seafoods by tourists and to obtain an exportable surplus;
- the tapping of the unexploited and under-exploited fisheries resources available to the Maltese fishing industry both inside Maltese territorial waters as well as in offshore fishing grounds;
- the availability of a regular supply of fresh fish by the evening out of seasonal fluctuations;
- the improvement in the nutritional diet of the Maltese population; and
- the reduction of imports of fish and fish products.

Various efforts were undertaken during the seventies to increase local fish supplies both by means of encouragement to traditional fishermen and by

Annex 14

PAGE 71 OF *DEVELOPMENT PLAN FOR MALTA 1973-1980, SUPPLEMENT*

of flexible and innovative leadership styles. Naturally, there are learning costs associated with these processes which have to be borne by the country. These costs, however, are themselves part of the learning cycle through which the Maltese economy, as a whole, is passing. The final objective of these industrial enterprises is workers' management and ownership. But it will be a mistake to expect the workers alone to shoulder the full burden of running them before these industries are set firmly on their feet.

Joint Ventures

The fact that Malta is attracting to its shores the investment of Arab funds in productive enterprises on a joint venture basis with local and other foreign capital is a firm indication of the wide confidence which exists in the growth potential of the Maltese economy. These efforts to attract and promote further involvement of Arab capital in the Maltese economy and to increase the range and extent of Arab participation in the local manufacturing sector will be actively pursued in the coming years.

It is with this aim in view that in October 1975 the Maltese and Libyan Governments reached agreement on the setting up of the Libyan Arab Maltese Holding Company Limited to develop and execute industrial, commercial, financial and fishing projects and related activities and in this way promote the process of industrialisation in the two countries in a complementary manner. The original capital of the Holding Company which stood at £M2 million was subsequently increased by £M6.4 million in July 1976.

The activities of the Libyan Arab Maltese Holding Company Limited have so far been extremely encouraging and the results already achieved show there is ample scope for increased industrial contacts and joint investment projects between the two countries. In August 1976 the Libyan Arab Maltese Holding Company Limited made its first major decision when it acquired a fifty per cent shareholding in the Malta Shipbuilding Company Limited which

Annex 15

Agreement between Libya and Malta Establishing a Fishing Company

AGREEMENT BETWEEN THE GOVERNMENT OF THE REPUBLIC OF MALTA AND THE SOCIALIST PEOPLE'S LIBYAN ARAB JAMAHIRIYA FOR THE ESTABLISHMENT OF A MALTESE-LIBYAN FISHING COMPANY

Whereas pursuant to minutes of meetings held between the Socialist People's Libyan Arab Jamahiriya and the Republic of Malta, in Malta on 5-7 Tho-Alheja 1394 Hija, corresponding to 19-21 December 1974, and following further meetings both parties agreed to establish a Malta-Libyan Arab Joint Fishing Company on the following basis:

Article 1

The name of the Company shall be "The Maltese-Libyan Arab Fishing Company".

Article 2

The main office of the Company shall be in the city of "Valletta". The Company may establish branches in Malta or Libya, or outside the two countries.

Article 3

The capital of the Company shall be (1,000,000) one million Maltese pounds and shall be divided into one hundred thousand (100,000) shares of ten Maltese pounds (£M10) each. The issued share capital shall be four hundred thousand Maltese pounds (£M400,000) divided into forty thousand (40,000) shares of ten Maltese pounds (£M10) each, and these shares shall be allotted as follows:

— The Socialist People's Libyan Arab Jamahiriya shall hold (20,000) shares;
— The Republic of Malta shall hold (20,000) shares.

Article 4

The management of the Company shall be vested in a Board of Directors comprising six members, three of them representing the Socialist People's Libyan Arab Jamahiriya and three representing the Maltese Government.

All decisions of the Board shall be taken by a majority of at least five members.

The Chairman of the Board shall be appointed from among the Maltese members while the Managing Director shall be appointed from among the Libyan members.

The General Assembly shall determine the remuneration of the members of the Board of Directors.

Article 5

The duration of the Company shall be for an indefinite period but, unless it is terminated earlier, or extended, by the shareholders in general meeting, it shall be dissolved on the lapse of 50 years.

Article 6

The Government of Malta shall relend to the Company the loan made by the Kuwaiti Fund for the setting up of a fishing project in Malta and on their part the Jamahiriya shall give to the Company a loan in the same sum and on the same conditions.

Article 7

Any dispute resulting from the execution of this agreement should be settled on an amicable basis, and if a settlement is not reached through negotiations within three months, the case may be referred to arbitration on a procedure to be agreed by the two contracting parties.

Article 8

This agreement shall come into force on the date of exchange of the official notification of its ratification.

Done and signed at Tripoli on 11 of Shaaban 1398 H corresponding to . . . July 1978, in two originals, in Arabic and in English, both being authentic.

(Signed) [Illegible],	*(Signed) [Illegible],*
For the Socialist People's Libyan Arab Jamahiriya.	For the Government of the Republic of Malta.

Annex 16

AGREEMENT BETWEEN LIBYA AND MALTA FOR THE SETTING UP OF A JOINT FISHING VENTURE

AGREEMENT FOR THE SETTING UP OF A JOINT FISHING VENTURE BETWEEN THE GOVERNMENT OF THE LIBYAN ARAB REPUBLIC AND THE GOVERNMENT OF THE REPUBLIC OF MALTA

In accordance with the minutes of the meeting held between Colonel M. Gaddafi, Chairman of the Revolutionary Command Council of the Libyan Arab Republic and Mr. Dom Mintoff, Prime Minister of the Republic of Malta held during 19th, 20th and 21st December 1974 (corresponding to 5-7 Tha Al Higga H.); and

In accordance with the minutes of the meeting between the Prime Minister of Malta, Mr. Dom Mintoff, and the Prime Minister of the Libyan Arab Republic, Major Abdul Salam Jalloud, held in Tripoli on the 19th May 1975 (corresponding to 7 Gomada El Awal 1395 H.), and following the meeting held in Tripoli in February 1975 (corresponding to Safar 1395 H.), between Dr. Omar Al Mugsi, Minister of State for Food Affairs and Marine Wealth, and Mr. Freddie Micallef, Minister of Agriculture and Fisheries;

The two Ministers have met in Valletta on 10th June 1975 (corresponding to 30 Comadi El Awal 1395 H.), and to further strengthen the existing relations between the two Republics, have agreed as follows:

1. The Government of the Libyan Arab Republic will provide two vessels — the *Susa* and a new vessel — in good condition and fully equipped for immediate trawler fishing operations in Libyan and Maltese waters. These vessels will be on loan for a maximum period of six months during which a Libyan Maltese Joint Fishing Company will be established, as part of the activities of the Libyan Arab Maltese Holding Company as per instrument signed on Monday, 19th May 1975 (corresponding to 7 Gomada El Awal 1395 H.) between the two Governments.
2. The two vessels will be operated by crews provided by the two countries. Each country will be responsible for the payment of the wages of its own crew.
3. The Malta Government will provide at their own expense the necessary technical know-how for the operation of these vessels with the approval of both Governments.
4. Maintenance will be at the expense of the Malta Government.
5. The fuel required for operating these two vessels will be shared equally.
6. The Malta Government undertakes to return the 2 (two) vessels, including all the equipment, in good condition.
7. These vessels will be used exclusively for fishing purposes.
8. The catches will be shared equally.
9. A Joint Committee will be established immediately between the two Governments to draw up the framework of a Libyan Maltese Fishing Company.

Signed in Malta on Tuesday, 10th June 1975 (corresponding to 30 Gomada El Awal 1395 H.) in two originals with the Arabic and English Languages, both texts being equally authentic.

(Signed) Dr. Omar AL MUGSI, Minister of State for Food Affairs and Marine Wealth for the Government of the Libyan Arab Republic.	*(Signed)* Alfred MICALLEF, Minister of Agriculture and Fisheries for the Government of the Republic of Malta.

Annex 17

PAGE 9 OF BURDON, *REPORT ON THE FISHING INDUSTRY OF MALTA*

Chapter One

THE SETTING

The Maltese Islands consist of Malta, Gozo and Comino with a number of small uninhabited islets. They lie in the centre of the Mediterranean Sea about sixty miles south of Sicily and one hundred and eighty miles north of Africa (Figure 1). This geographical position, in conjunction with the mistaken belief that the sea abounds in fish, is the cause of much of the criticism of the fishing industry. Why should Malta be dependent upon imports of processed fish? And why should the fishermen operate in the creeks and harbours? But the productivity of the Mediterranean Sea is not high — the crystal clear water reflects the scarcity of the micro-organisms upon which life in the sea ultimately depends. Moreover, it is one of the most heavily fished areas in the world and will become increasingly so in the years to come. Meanwhile, the fishing grounds within the range of the existing fishing fleet are limited in extent and the available resources must be fully utilised.

THE FISHING GROUNDS

The Maltese Islands lie on the south-western extremity of an extensive shelf — over which the water does not exceed one hundred fathoms in depth — which extends southwards from the eastern end of Sicily. This area is not rich and major bottom fisheries lie within depth of less than fifty fathoms. In this respect Malta is fortunate as it is situated on the western extremity of a large platform over which the depths vary from twenty to fifty fathoms (Figure 2). In the north-east this platform is barely four miles wide and it is less than this on the southern and western coasts except in the vicinity of Filfla. Eastwards, however, it is more extensive and includes the shallow Hurd Bank which is of great importance to the fishing industry. Beyond the hundred fathom line the bottom slopes rapidly into deeper water and within a short distance depths of four to six hundred fathoms are reached.

Since the bottom fisheries are largely restricted to areas in which the sea is less than fifty fathoms in depth, the fishing intensity on the platform surrounding the island is high. Moreover, the sheltered creeks and harbours are exploited by professional fishermen particularly in rough weather. This has given rise to considerable friction between the amateur and professional fishermen.

The more distant grounds on the coastal shelf of Tunisia and the small Medina Bank south of Malta are open to the fishermen. Unfortunately there are only four fishing boats in the existing fleet which are large enough to make the trip safely and there are no qualified navigators available in the industry. In consequence, although the productive fishing grounds off Lampedusa are less than 100 miles from Malta, little use is made of that area.

Annex 18

PAGE 4 OF FAO, *REPORT TO THE GOVERNMENT OF MALTA ON FISHERIES DEVELOPMENT* (1970)

The five factors which appear to have militated against development along the lines indicated above are:

(1) Lack of capital (although grants and loans are available).
(2) Lack of knowledge of techniques used elsewhere (although it is acknowledged that Italian trawlers have some of these aids and appear to be profitable).
(3) Lack of experience in the financing and operating of fishing companies and of financing larger and more sophisticated fishing vessels.
(4) The belief that larger vessels need larger crews and therefore are not profitable, i.e., "A launch requires four men for longlining, therefore why trawl with 8 to 10 men?"
(5) The dislike of Maltese fishermen of staying out at sea for any period beyond two days. This may or may not be true but it is said to be the reason why, on existing trawlers, the crews are predominately Italian. It is possible that this situation has developed, not because of a reluctance of the Maltese fishermen to be away from home but because they prefer to work in family units, which must involve small boats within their capital resources. Providing these can offer an acceptable income, and they will so long as the market is grossly undersupplied, they see no reason why they should stay at sea longer. In other words, the dislike of spending more time at sea is related to lack of competition and lack of an appreciation of modern fishing methods, rather than an ingrained dislike of being away from home.

In discussion with two owners, each of whom operates a trawler of approximately 70 ft, it was made quite clear that trawling is a profitable business and could be more profitable if the distribution and marketing of fish in Malta was organized properly and a demand created for all species caught. At present a selection of the species caught is made by the trawlers and only those which sell at high prices are landed in Malta. The remaining species are transferred at sea for sale in Sicily and other Italian markets. Similarly, some of the species fetching a high price in Malta are transferred from vessels fishing under the Italian flag to Maltese vessels for sale in Valletta market. Because of this transfer of part of the catch between vessels of different flags, the statistics of landings shown in the annual tables are not meaningful, nor are the figures given in the official tables of the gross earnings of the seven trawlers referred to earlier.

Earnings for the small Maltese trawlers and the Sicilian trawlers, given in confidence, clearly indicate that a trawler of 70 ft is an attractive economic proposition and larger vessels, unrestricted by weather, could be even more attractive. However, except for two vessels, both approximately 70 ft long, there has been no development of this type of fleet because of the factors given earlier and because markets in Italy are more receptive than in Malta.

In this report on the fishing industry of Malta, Burdon recommended the introduction of larger trawlers. Government aid was provided and a number of trawlers up to 70 ft were purchased. However, the expected growth in the trawler fleet was not maintained and vessels larger than 70 ft were not bought. This may be due to the factors listed earlier, i.e., lack of management experience, lack of crews, lack of experience in modern fishing techniques and operation of larger sophisticated vessels. Quite naturally, applications for government assistance were, and continue to be, made largely by operators of smaller vessels and the type of vessels which are traditional.

In all of 1969, £18,000 was available for grants and £12,000 for loans and between 1964 and 1970 £30,000 was given as grants and loans for 16 luzzos and six launches.

Annex 19

PAGES 73-74 AND 76 OF ANDERSON AND BLAKE, "THE LIBYAN FISHING INDUSTRY" IN ALLAN (ED.), *LIBYA SINCE INDEPENDENCE*

[73-74]

INTRODUCTION

With 1,685 km of coastline, and the second largest area of continental shelf in the Mediterranean (some 57,000 km^2 to 200 metres of water) Libya appears to have every opportunity for fishing. Libyan waters however are not particularly high in phytoplankton production, largely because of a shortage of nutrients. The north coasts of the Mediterranean are far more favourable for fish food production, but even these do not rank among the best fishing grounds in the world. With catches by non-Mediterranean States such as Japan taken into account, approximately 1.2 million tonnes of fish were caught in the Mediterranean and Black Sea in 1977 of which about three-quarters was from the Mediterranean Sea. Total potential production from the Mediterranean is uncertain, but it seems clear that in some areas catches could be increased and this includes fishing grounds off Libya. Fish stocks are not unlimited, however, and optimum size of catch has been reached for several species already in the Mediterranean as a whole. At present Libya's fish catch is one of smallest in the Mediterranean (Table 1), but the Libyan Government hopes to expand production to 8,000-12,000 tonnes by 1995.

HISTORICAL PERSPECTIVE

Pre-Italian Period

There was very little indigenous fishing along the Libyan coast in the early years of the twentieth century. This relative neglect of fishing is surprising, but may be attribued to: coastal waters noted for frequent storms; lack of natural harbours; absence of a seafaring tradition and indifference to fish eating; ignorance about the productivity of coastal waters; high price of fish compared with meat; and a small and scattered population, many of whom favoured the hilly districts of the interior to the coast. The last point deserves emphasis; at the beginning of this century the population of Libya was probably around half a million, many of whom were nomads.

Table 1. Mediterranean and Black Sea fish catches by coastal States (1977) in tonnes

Albania	4,000	Libya	4,803 *
Algeria	43,475	Malta	1,459
Bulgaria	10,172	Morocco	33,474
Cyprus	1,189	Romania	6,142
Egypt	6,683	Spain	140,957
France	44,011	Syria	826
Greece	71,842	Tunisia	38,441
Israel	3,600	Turkey	138,174
Italy	355,213	USSR	244,098
Lebanon	2,400	Yugoslavia	35,248

* FAO estimate: the 1977 catch was actually 2,475 tonnes

Source: Yearbook of Fishery Statistics, Vol. 44, 1977, FAO 1978, Table C37.

Details of fishing off Libya before the First World War are sketchy. A few small boats engaged in inshore fishing, notably in Tripolitanian waters. Traditional sponge fishing was already highly developed, largely by the Greeks, and sponge production increased during the nineteenth century to reach an all-time peak of 71,883 kg in 1911. Foreign fishing boats (Greek, Maltese and Italian) also fished in Libyan waters and visited Libyan ports from time to time.

The Italian Period 1911-1943

The Italians had some knowledge of Libyan waters, and appear to have been determined to exploit their potential for fish, sponges, corals and the cultivation of pearls. As early as 1912 fishing boats from Naples were sent to undertake fishing trials from . . .

---

[76]

— £L 250,000 and the sponge catch at £L 30,000 in 1958, or about 0.5 per cent of GNP. In general, fishing methods (other than sponge fishing) were regarded as rather primitive, the catch per man fishing day being as low as 10 kg, compared with 100 kg in many other Mediterranean countries.

During the later years of this period, the sponge fishing industry virtually disappeared, while the number of tonnara in operation declined to five or six as a result of falling catches of tuna.

1970-1980

The 1970s witnessed significant advances in the Libyan fishing industry. Total catches rose to over 4,000 tonnes per annum, largely as a result of the operations of three companies using modern trawlers to exploit the waters of the continental shelf, beyond the range of traditional boats. Figures of catches for 1974-1979 show that Libyan catches doubled in about two decades (Table 2).

Table 2. Libya: fish catches 1974-79 (in tonnes)

Companies	1974	1975	1976	1977	1978	1979
Libya Fishing Company	308	173	366	229	200	120
Libya-Tunisia Company	351	659	293	310	430	312
Libya-Greece Company	—	—	—	—	—	464
Total	659	832	659	539	630	896
Private Sector						
Tripoli	2426	2722	1602	1022	1783	1676
Benghazi	280	312	317	316	1123	600
Zawia, Zuwarah	294	337	197	151	206	560
Al Khums, Misratah, Surt	325	506	1174	200	523	698
Darhah, Tobruq	343	96	111	247	90	70
Total	3668	3973	3401	1936	3725	3604
Grand Total	4327	4805	4060	2475	4355	4500

Source: Department of Production, Tripoli. September 1980.

During the 1970s the Government of Libya evolved plans to develop the fishing industry to its optimum level. Libya without oil is poorly endowed . . .

Annex 20

PAGES 5-8, 12, AND 29-44 OF *DEVELOPING ISLAND COUNTRIES*, UN DOC. TD/B/443/REV.1

[Not reproduced]

Annex 21

PAGE 9 OF THE ANNEX ATTACHED TO UN DOCUMENT A/32/126, 28 JUNE 1977

[Not reproduced]

Annex 22

PAGES 3 AND 4 OF DICKINSON, *THE EQUALITY OF STATES IN INTERNATIONAL LAW*

[Not reproduced]

Annex 23

PAGE 510 OF REUTER, *PRINCIPES DE DROIT INTERNATIONAL PUBLIC*

[Not reproduced]

Annex 24

PAGE 287 OF THE THIRD UNITED NATIONS CONFERENCE ON THE LAW OF THE SEA, *OFFICIAL RECORDS*, VOL. II

[Not reproduced]

Annex 25

PAGES 87 AND 89 OF GENERAL ASSEMBLY, *OFFICIAL RECORDS, 28TH SESSION, SUPPLEMENT NO. 21 (A/9021),* VOL. III

[Not reproduced]

Annex 26

PAGES 232 AND 233 OF THE THIRD UNITED NATIONS CONFERENCE ON THE LAW OF THE SEA, *OFFICIAL RECORDS,* VOL. III

[Not reproduced]

Annex 27

PAGE 84 OF THE THIRD UNITED NATIONS CONFERENCE ON THE LAW OF THE SEA, *OFFICIAL RECORDS,* VOL. VII

[Not reproduced]

Annex 28

PAGE 200 OF THE THIRD UNITED NATIONS CONFERENCE ON THE LAW OF THE SEA, *OFFICIAL RECORDS,* VOL. I

[Not reproduced]

Annex 29

PAGE 79 OF THE THIRD UNITED NATIONS CONFERENCE ON THE LAW OF THE SEA, *OFFICIAL RECORDS,* VOL. IX

[Not reproduced]

Annex 30

PAGES 210-211 OF THE THIRD UNITED NATIONS CONFERENCE ON THE LAW OF THE SEA, *OFFICIAL RECORDS*, VOL. III

[Not reproduced]

Annex 31

LIMITS IN THE SEAS: NO. 81, 27 DECEMBER 1979, P. 6; NO. 83, 12 FEBRUARY 1979, PP. 13-14; NO. 84, 15 FEBRUARY 1979, P. 5; NO. 97, 6 DECEMBER 1982, P. 5

[Not reproduced]

Annex 32

PAGES 281 TO 284 OF GILBERT GUILLAUME, "LES ACCORDS DE DÉLIMITATION MARITIME PASSÉS PAR LA FRANCE", *PERSPECTIVES DU DROIT DE LA MER À L'ISSUE DE LA TROISIÈME CONFÉRENCE DES NATIONS UNIES*, COLLOQUE DE ROUEN DE LA SOCIÉTÉ FRANÇAISE POUR LE DROIT INTERNATIONAL, 1983

[Not reproduced]

Annex 33

UN DOCUMENTS NG7/2/REV. 2 AND NG7/10/REV. 2, 28 MARCH 1980

[Not reproduced]

Annex 34

PAGES 188 AND 190 OF THE UNITED NATIONS CONFERENCE ON THE LAW OF THE SEA, *OFFICIAL RECORDS*, VOL. III

[Not reproduced]

Annex 35

PAGE 42 OF *NEW DIRECTIONS IN THE LAW OF THE SEA*, DOCUMENTS, VOL. I

[Not reproduced]

Annex 36

PAGES 651-652 OF KARL, "ISLANDS AND THE DELIMITATION OF THE CONTINENTAL SHELF: A FRAMEWORK FOR ANALYSIS", IN *AMERICAN JOURNAL OF INTERNATIONAL LAW*, VOL. 71, 1977

[Not reproduced]

Annex 37

PAGE 132 OF DE AZCARRAGA, "ESPAÑA SUSCRIBE, CON FRANCIA E ITALIA, DOS CONVENIOS SOBRE DELIMITACION DE SUS PLATAFORMAS SUBMARINAS COMUNES", IN *REVISTA ESPAÑOLA DE DERECHO INTERNACIONÁL*, VOL. XVII; UNOFFICIAL TRANSLATION

[Not reproduced]

Annex 38

PAGES 742, 749 AND 750 OF FELDMAN AND COLSON, "THE MARITIME BOUNDARIES OF THE UNITED STATES", IN *AMERICAN JOURNAL OF INTERNATIONAL LAW*, VOL. 75, 1981

[Not reproduced]

Annex 39

PAGE 426 OF HODGSON AND SMITH, "BOUNDARY ISSUES CREATED BY EXTENDED NATIONAL MARINE JURISDICTION", IN *THE GEOGRAPHICAL REVIEW*, VOL. 69, NO. 4, OCTOBER 1979

[Not reproduced]

Annex 40

PAGES 224-225 OF BOWETT, *THE LEGAL RÉGIME OF ISLANDS IN INTERNATIONAL LAW*

[Not reproduced]

70

CERTIFICATION

I, the undersigned, Abdelrazeg El-Murtadi Suleiman, Agent of the Socialist People's Libyan Arab Jamahiriya, hereby certify that the copy of each document attached as a Documentary Annex in Volume III of the Counter-Memorial submitted by the Socialist People's Libyan Arab Jamahiriya is an accurate copy; and that all translations are accurate translations.

(Signed) Abdelrazeg EL-MURTADI SULEIMAN,
Agent of the Socialist People's
Libyan Arab Jamahiriya.

COUNTER-MEMORIAL OF MALTA

CONTRE-MÉMOIRE DE MALTE

13

VOLUME I

INTRODUCTION

1. This Counter-Memorial is filed pursuant to the Order made by the President of the Court on 26 April 1983 fixing 26 October 1983 as the time limit for the filing of the counter-memorials in accordance with Article II of the Special Agreement between Malta and Libya.

2. This Counter-Memorial is divided into the following Parts:

Part I	The Fundamental Ideas Underlying the Libyan Case
Part II	The Task of the Court
Part III	Critique of Libya's Substantive Case
Part IV	Restatement of Malta's Case in the light of the Libyan Memorial

PART I

THE FUNDAMENTAL IDEAS UNDERLYING THE LIBYAN CASE

CHAPTER I

THE SUBSTANCE OF THE LIBYAN CASE: MALTA DISREGARDED

3. Reduced to its essentials, the argument developed in the Libyan Counter-Memorial may be summarized as follows: there is a fundamental discontinuity between the continental shelf of Malta and the continental shelf of Libya arising out of the presence of a zone which Libya calls the "Rift Zone". This discontinuity enables one to identify two distinct natural prolongations. The result, so Libya argues, is that the delimitation must be carried out on the basis of this discontinuity.

4. A glance at the map immediately enables one to identify one of the most remarkable elements in this claim: it takes no account of the existence of Malta. Since Malta is presented as being situated on the natural prolongation of Sicily, and the "Rift Zone" is presented as a natural frontier which imposes itself as the appropriate line of delimitation, the "Rift Zone" separates the natural prolongation of Libya not only from that of Malta but at the same time from that of Italy. The northern boundary of the Libyan continental shelf as conceived by Libya in relation to Malta is thus, in the logic of the Libyan argument, exactly the same as the one which Libya would claim vis-à-vis Italy if Malta did not exist.

5. Malta will demonstrate in the course of this Counter-Memorial that in fact the so-called "Rift Zone" does not show the characteristics of a radical physical separation between the natural prolongations of the two countries and that in international law this question has in any event no relevance to the delimitation of the continental shelf. It is important however to identify at the outset what one might call the philosophy of the Libyan case, for many aspects of the Libyan Memorial are more readily understood in the light of such an identification.

6. It is in relation to this philosophy, for example, that the contention so strongly advanced in the Libyan Memorial of "an indefinite extension of the Libyan claim seawards"[1] assumes a special importance. A reading of the Libyan Memorial conveys the impression that for Libya it is less a matter of delimiting the continental shelf of the neighbouring states of Malta and Libya, than it is one of establishing how far towards the north Libya's continental shelf rights extend. Libya would really like to see its rights stretch as far as the limit of Italian rights without being in any way affected by the existence of Malta's

---

[1] Libyan Memorial p. 52 para. 4.21; cf. pp. 49–53 paras. 4.12–4.23.

79

rights. It is in the same perspective that one may see the Libyan observation that the Court should not delimit the continental shelves of Malta and Libya beyond the Sicily–Malta Escarpment, i.e. beyond the meridian of Ras Zarrouq, at about 15° 30′ E, "where this physical boundary roughly ends".[1] Libya's continental shelf rights evidently continue, so the Libyan Memorial says on a number of occasions,[2] further to the east. This contention, one may observe in passing, is somewhat surprising; why should the descent into the depths of the Ionian sea limit the rights of Malta towards the east but not constitute any obstacle to the extension of the rights of Libya towards the north? However, it is necessary, so Libya considers, that a delimitation vis-à-vis Malta should in no way trespass on some future delimitation vis-à-vis Italy. Moreover, the Libyan Memorial adds:

> "... a little island group ... would erase the obvious relationship that exists across this Sea between the coasts of mainland Italy and of Libya".[3]

At least one may say Libya is not concealing its cards. For it, the true confrontation in this part of the Mediterranean is between Libya and "mainland" Italy, and it is only in relation to Italy that Libya is prepared to limit its indefinite claim northwards–a new kind of "manifest destiny". By contrast, Libya never appears to acknowledge the existence of a face-to-face relationship with Malta.

7. To give some semblance of justification to this attempt to transform the delimitation between Malta and Libya into the establishment of a northern boundary of continental shelf rights between Libya and Italy, as if Malta did not exist, the Libyan Memorial does not hesitate to embark upon the most surprising descriptions. The purpose is obvious: if Malta could be regarded as a negligible quantity – as seems to be the thrust of Libya's Memorial – there might after all be nothing juridically scandalous if Malta were disregarded.

8. First of all, says the Libyan Memorial, Malta is not really an island opening on to the ocean. The population of the two islands of the Maltese archipelago, so Libya describes it, has always been essentially agricultural, and the capital cities of the two islands "were in the centre of each island". Better still:

> "The inland location of almost all towns and villages is a striking characteristic of Malta even today. In short, Malta is at present, as it has been in the past, an *'inland' community*.[4] Malta is in effect *land-centered*[4] and not, as might have been expected, a nursery of sailors and fishermen dependent on the sea, comparable to Greece or parts of Spain and Italy"[5]

In the same vein the suggestion is made that Maltese "fishing activity is on a small scale".[1] Then the Libyan Memorial adds that, even if Malta were an island possessing coasts opening onto the sea, these face not the south but only the north:

---

[1] *Ibid.* p. 34, para. 3.24.

[2] *Ibid.* p. 34, para. 3.24; p. 133 para. 8.16; p. 149 para. 9.49.

[3] Libyan Memorial, p. 149, para. 9.49.

[4] Emphasis supplied.

[5] *Ibid.* pp. 20–21, para. 2.40.

> "... on the Islands of Gozo and Malta the longest stretches of coast or coastal front face north or, more often, north-east ... Very little of the Maltese coast actually faces due south ..."[2]

Moreover, the southern coast, to the extent that it exists, has no economic interest:

> "... the major economic coastal activity is restricted largely to the northeast and east coasts"[3],

and the "inland community" which constitutes Malta has

> "... just one large window to the sea – a window facing northward. Especially notable is the complete absence of any permanent settlement along the whole of the south and west-facing coastline of the Island of Malta".[4]

In a word, Malta is not really an island; or, if it is, it has one side only. It is an island with a northern facing facade, without a back – a kind of unilateral island.

9. For those who know the close links between Malta and the sea and the significant rôle which Malta has played as an island situated at the cross-roads of the north-south and east-west passages of the Mediterranean, such descriptions hardly merit refutation. However, out of respect for the Court, Malta has set out in an Annex[5] a number of historic and economic facts and other material which may assist the Court in assessing at their true value the Libyan allegations which have as their manifest purpose the creation of the impression that Malta is "inland and land-centered" rather than being a true island.

10. To the extent that Malta possesses coasts, Libya continues, these coasts are in any case insignificant – so insignificant that "they are practically impossible to gauge" on a map of the scale of Map 1 of the ① Libyan Memorial. "From Map 1", it is asked, "in what direction could the coasts of Malta be said to face?".[6] The Libyan Memorial never wearies of insisting upon the short length of the Maltese coasts and of comparing them with the great length of the Libyan coasts. From this difference the Memorial draws legal conclusions which the present Counter-Memorial will examine presently. For the moment it is sufficient simply to counter the impression which the Libyan Memorial attempts to create, viz. that the coasts of Malta are so ridiculously short, compared with those of Libya, that they are not even worth taking into

---

[1] *Ibid.* p. 14, para. 2.15.

[2] *Ibid.* p. 20, para. 2.37.

[3] *Ibid.* p. 20, para. 2.39.

[4] *Ibid.* p. 21, para. 2.49.

[5] Annex 1.

[6] *Ibid.* p. 17, para. 2.27.

consideration. To reinforce this impression, the Libyan Memorial does not limit itself to comparing the shortness of the Maltese coast with the lengths of the Libyan coast. It also brings into play the comparison of the small insular territorial area of Malta with the enormous continental mass of Libya. This idea crops up as a theme throughout the Libyan Memorial:

> "... in contrast to Malta, small islands with very limited coastlines however measured, Libya is a very large continental State with an extensive coastline"[1];
>
> "... in the circumstances of the very small island group of Malta and the large continental State of Libya with its extended coastline ..."[2];
>
> "... the long extended coast of a continental landmass opposite small islands"[3];
>
> "... the obvious point that Malta and Libya are, in terms of size, just not comparable"[4];

11. Malta, Libya says, is an island "small indeed" even in the Mediterranean.[5] Its dimensions "are not on the same scale as those of other States that abut the Central Mediterranean",[6] and even less are they on the same scale as the "continental landmass" of Libya. This for the Libyan Government is one of the most important elements in the situation:

> "... it is apparent that the most significant relevant circumstance of a geographic character is the difference between the size of Libya and the fact that *Malta* ... is a *small group of small islands while Libya is a vast continental State*".[7]

12. It is evident that the respective sizes of the two States interested in a delimitation does not have the slightest legal relevance; the only thing which matters is the coasts, as will be seen later, but not the *hinterland* which lies behind them. There is no support either in State practice or in arbitral or judicial decisions for the suggestion that a State with a large area has greater maritime rights than a State with a small one or that a continental State has more rights than an insular one.

13. The Libyan Memorial appears to have overlooked entirely the fact that Malta is not only a *State* but also a *coastal* State. The Libyan Memorial also forgets that, by virtue of the principle of the sovereign equality of States, Malta has the same rights as all coastal States to the

---

[1] *Ibid.* p. 22, para. 2.46.
[2] *Ibid.* p. 53, para. 4.24.
[3] *Ibid.* p. 135, para. 9.03.
[4] *Ibid.* p. 142, para. 9.21.
[5] *Ibid.* p. 141, para. 9.20.
[6] *Ibid.* p. 148, para. 9.45.
[7] *Ibid.* p. 137, para. 9.11: Emphasis supplied.

enjoyment of maritime jurisdiction. This almost complete disregard of the coastal State quality of Malta has, as will be seen, led Libya to misunderstand both the fundamental principle of the sovereign equality of States and the no less fundamental principle of the right of every coastal State to the possession of maritime jurisdiction as acknowledged by international law.

14. The Libyan Memorial does not hesitate to push this concept of the inequality of States to the extreme. The Mediterranean Sea, so Libya explains, is small and the areas of continental shelf available for division are relatively limited. Small States and, even more so, small islands must understand that they cannot have claims comparable with those of large States. The extraordinary language of the Libyan Memorial warrants quotation:

> "The Mediterranean Sea is bordered by many continental States and dotted with many islands. When the claimant is a very small island, it must be fully prepared to consider the rights and claims of its much larger neighbours";[1]
>
> "... a small group of islands such as Malta must ..... according to equitable principles, necessarily expect a relatively small area of continental shelf".[2]

In these surprising passages one finds simultaneously expressed both the idea of unequal maritime rights for States of unequal size and the idea of the inequality of continental and insular States.

15. Reference has already been made to the suggestion in the Libyan Memorial that the only relevant coastline, if any, of Malta is the one which faces north. This is only one aspect of the systematic attempt in the Libyan Memorial to persuade the Court that Malta possesses no significant coasts oriented towards the south, capable of generating areas of maritime jurisdiction between its coasts and those of Libya. The Libyan Memorial makes a great effort not only to distort the coasts of Malta towards the north but also to attach Malta entirely to the north, that is to say, to Sicily and to deny to it any maritime "window" towards the south. These efforts take a number of diverse and unexpected forms:

— Originally, so Libya says, Malta and Sicily were but one: "there seems little doubt that the Maltese islands were connected by land to Sicily during prehistoric times",[3] "with Malta emerging less than 10 million years ago";[4]

— Emphasis is based upon "the close geological ties between Malta and Sicily";[5]

— The Memorial further notes "Malta's relative proximity to

---

[1] *Ibid.* p. 155, para. 10.05.
[2] *Ibid.* p. 136, para. 9.07.
[3] *Ibid.* p. 39, para. 3.38.
[4] *Ibid.* p. 40, para. 3.32.
[5] *Ibid.* p. 41, para. 3.45.

Sicily”,[1] and the parallel character of the direction of their coasts;[2]

— More significantly, the Libyan Memorial stresses, on several occasions, “Malta’s close physical connection with it (Sicily)”,[3] “the present-day morphological link between Malta and Sicily”[4] and that Malta “physically projects” from Sicily;[5]

— This attachment is demonstrated by the fact, stated repeatedly, that Malta is situated on the Malta–Ragusa Plateau, which is itself an extension of Sicily: the Maltese Islands “are situated on the geomorphological extension of the Sicilian landmass”;[6] it is on the “submarine extension of the Island of Sicily... the Ragusa–Malta Plateau, that the Maltese Islands are situated”;[7] they are “poised ... on the southwest edge of the Ragusa–Malta Plateau”;[8] “it is on the southwestern edge of the Ragusa–Malta Plateau that the Maltese Islands are perched”.[9]

— Finally even toponymy has itself been adjusted in such a way as better to suggest this fundamental unity between Malta, the Ragusa–Malta Plateau and Sicily.[10] Thus what the maps and ⑪ specialists (including the IBCM, so much appreciated by Libya) normally call the “Malta Plateau” is referred to in the Libyan Memorial as the “Ragusa–Malta Plateau” because, as it frankly admits, this term is more descriptive of the geomorphological link between Malta and the Ragusa area in Sicily”.[11] Sometimes the word “Malta” is itself “forgotten” and mention is simply made of the “Ragusa Platform”.[12] In a comparable manner, what the Parties in the *Tunisia-Libya* case generally called the “Malta–Misratah Escarpment” or “Ionian Flexure”,[13] is described in the Libyan Memorial – at any rate as regards its northern part – as the “Sicily–Malta Escarpment”.[14] The Libyan approach is eventually summarized in one phrase:

“.... Malta in so many ways is linked to the North”.[15]

What all this means is clear: Malta has no basis for a legal claim to any maritime space upon which she turns her back.

16. To this insignificant island, facing only north, lacking any “window” towards the south and inhabited by an “inland” and “land-

---

[1] *Ibid.* p. 23, para. 2.50.
[2] *Ibid.* p. 20, para. 2.37 and p. 41 para. 3.43.
[3] *Ibid.* p. 14, para. 2.17.
[4] *Ibid.* p. 40, para. 3.41.
[5] *Ibid.* p. 42, para. 3.48.
[6] *Ibid.* p. 14, para. 2.14.
[7] *Ibid.* p. 28, para. 3.08; of p. 29, para. 3.11.
[8] *Ibid.* p. 42, para. 3.48.
[9] *Ibid.* p. 16, para. 2.22; of p. 128, para. 8.05.
[10] *Ibid.* of p. 42, para. 3.48.
[11] *Ibid.* p. 28, Note 1.
[12] *Ibid.* p. 40, para. 3.41.
[13] See *I.C.J. Reports*, 1982, p. 41, para. 32, and p. 57 para. 65.
[14] Libyan Memorial, p. 33, para. 3.21 and p. 41, para. 3.46.
[15] *Ibid.* p. 136, para. 9.10.

centered" community, the Libyan Memorial opposes a "continental landmass" of considerable size, traditionally oriented towards the sea and facing north:

> "The coastal areas of Libya have been not only where most of its population has settled but also the centre of major currents of east/west trade from ancient times ... Not surprisingly, in light of this *traditional orientation toward the sea*,[1] the fishing industry of Libya has been and continues to be locally important....[2] Libyan *contact with the sea*[1] along this lengthy coastline was an essential formative influence ..."[3]
>
> "The people of what now forms the territory of Libya have *traditionally looked seaward across*[1] the Mediterranean Sea ..."[4]

17. One cannot avoid being struck in this respect by the insistence with which the Libyan Memorial urges that at no time, nor in any manner, has Libya limited its northwards-probing maritime ambitions: the earlier legislation mentioned in this connection has, so Libya contends, remained in force after Libya became independent in 1951 and has since then been continued by the policy followed by Libya in connection with the development of hydrocarbons. As has already been noted, the Libyan Memorial does not hesitate to speak of "... the indefinite extent of the Libyan claim seawards ..."[5]

18. Insisting on the geomorphological and geological attachment of Malta to Sicily, on Malta's "recent" appearance, on the smallness of its size and coastal length, and on the trifling extent of its maritime activities, the Libyan Memorial strives to characterise Malta as a "minor" by virtue of its age, size and development and to accord it no more than a junior role and position. To make matters worse, Libya also endeavours to deny Malta not only its physical and cultural independence, but also its position as a State. By these multiple and sometimes contradictory touches the Libyan Memorial seeks to paint a picture conveying the general impression of a confrontation between, on the one hand, an insignificant *inland island* which turns its back on the area to be delimited and, on the other hand, a coastal State of substantial size, traditionally oriented towards the north and whose "claim seawards" is rightly of "indefinite extent".[6]

---

[1] Emphasis supplied.

[2] The words "locally important" are a clear indication of a fishing activity of limited dimension. Elsewhere the Libyan Memorial speaks of the interest of the Libyan population "in fishing", and specifies "especially sponge fishing, in the waters to the north without any particular regard for limits such as those of the territorial sea" (Libyan Memorial p. 49 para. 4.12). These limited Libyan fisheries may be contrasted with the importance of the Maltese fisheries in the area subject to delimitation, as is shown by the Maltese Memorial (pp. 18–19, paras. 44–46).

[3] Libyan Memorial, p. 23, para. 2.48.

[4] *Ibid.* p. 49, para. 4.12.

[5] *Ibid.* p. 52, para. 4.21.

[6] With a view to denying maritime rights to Malta, the Libyan Memorial claims both that Malta is only an island and that it has no southern coasts. These two claims hardly appear to be compatible.

19. In these circumstances, it is not surprising that the Libyan argument leads in substance to nothing other than a request to the Court – in the name of equity – to accord Libya the bulk of the continental shelf between itself and Malta and to accord Malta no more than a relatively insignificant area. Nearly everything to Libya, practically nothing to Malta: this is the essence of the Libyan claim.

20. Such a claim is clearly contrary to well established principles of international law relating to the delimitation of the continental shelf:

— It disregards the facts which constitute the geographical context of the delimitation. As an island, Malta has coasts on all sides, including the south, and Malta has always lived – and continues to live – in close relationship with the sea.

— It disregards the basic juridical principle that:

> "... the coast of the territory of the State is a decisive factor for title to submarine areas adjacent to it".[1]

For this purpose one cannot speak of "good" and "bad" coasts: there are only coasts, from which it is necessary to start, here as elsewhere, and the southern coasts of Malta are no less relevant than its northern coasts for the purpose of generating maritime rights.

— It also disregards the principle of the equality of States and takes no account of the fact (to which this Memorial will return in due course) that it is precisely with a view to assuring equality between all coastal States that continental shelf rights have been recognized by international law for every coastal State up to a distance of at least 200 nautical miles from its coasts, whatever may be the configuration of the sea-bed.

21. One of the aspects of the Libyan Memorial most open to criticism from a legal point of view lies in the fact that, by placing the boundary between the continental shelves of Malta and Libya only a few miles from the coasts of Malta, it cuts Malta off from its proper maritime extension, encroaches on Malta's inherent right to explore for and exploit the resources of the sea-bed in front of its coasts and infringes Malta's security interests. One may recall in this connection what Libya herself asserted in the *Tunisia–Libya* case:

> "The rationale for the prohibition against encroachment is self-evident. It lies in the fact that coastal States will not tolerate a sea-bed area immediately in front of their coasts being used by a foreign power. Considerations of security and of practicality, in the sense of the need to have direct and easy liaison between the onshore and offshore activities which are essential to sea-bed exploration and exploitation, make it imperative that a State should have jurisdiction over activities directly in front of its coast. It was for this very reason that, at Geneva in 1958, the proposal by

---

[1] *Tunisia–Libya Continental Shelf* Case, *I.C.J. Reports* 1982, p. 61, para. 73.

> the Federal Republic of Germany to promote 'le laissez-faire' beyond the limits of the territorial sea was totally unacceptable to the Conference. And it was for this same reason that the coastal State's rights were regarded as attaching to the State *ipso facto* and *ab initio*, and not made dependent upon physical occupation or even proclamation".[1]

Similarly Judge Jiménez de Aréchaga said the following in his Separate Opinion:

> "The reason which explains the wide and immediate acceptance of the doctrine was not so much the possibility it offered of exploiting the natural resources of the shelf, but rather the fact that it authorized every coastal State to object to the exploitation of the sea-bed and subsoil in front of its coasts being undertaken by another State. At that time, only a handful of industrialized States possessed the technology required for such exploitation. Yet, all coastal States accepted the doctrine without hesitation mainly because of its negative consequences, namely, that it prevented a rush and grab for sea-bed resources being undertaken by a few States on the basis of the Grotian dogma of "freedom of the seas". It is for this reason that the 1958 Convention does not subordinate the acquisition *ab initio* of sovereign rights to actual exploitation or occupation, or even to a proclamation of these rights".[2]

Evidently the basic reason why Judge Jiménez de Aréchaga rejected an equidistance line in the *Tunisia–Libya* case was because "this line would impinge on the basic principle of non-encroachment, producing a cutting-off effect by pulling the line too close to Tripoli . . .".[3]

22. The Libyan Memorial states:

> "The Mediterranean Sea is hardly the place for disproportionate claims".[4]

Malta subscribes fully to this assertion. Of the two claims – that of Malta to an equidistance line and that of Libya which extends the Libyan continental shelf to the very "windows" of Malta – which is the "disproportionate claim"? Malta does not feel that its claim may be so described.

23. In limiting Malta's continental shelf rights to a minuscule fringe to the south, and denying to Malta any extension towards the east beyond the Sicily–Malta Escarpment,[5] Libya's claim in practice leads to placing Malta in an enclave in the middle of the Mediterranean.

---

[1] Libya's Reply, p. 59, para. 130.

[2] *I.C.J. Reports* 1982, pp. 118–9, para. 70.

[3] *Ibid.* pp. 132, para. 104.

[4] Libyan Memorial, p. 136, para. 9.07.

[5] It should be noted that the rights of Italy vis-a-vis Greece, far from having been limited to this Escarpment by the 1977 Agreement, have been acknowledged as extending to the middle of the Ionian Sea (see Map on page 100 of Malta's Memorial and Map 15 of the Libyan Memorial).

Such a solution is quite without precedent, in relation to Island States. In arguing for a delimitation which approximates to an enclave solution, the Libyan Memorial once again disregards the principle of the equality of States.

24. To sum up: the Libyan case consists fundamentally in minimizing, virtually to the point of denial, the maritime rights of Malta as a coastal State. Geomorphologically and geologically Malta is deemed to be no more than an appendix of Sicily. Malta is exclusively oriented towards the north. The life and activity of its people are said to have nothing to do with the sea. Malta has no maritime window towards the south. Malta is so small that, compared with the immense continental mass of Libya, it may effectively be disregarded. Malta is a kind of spoilsport to which it would be unreasonable to attach any importance. The only important delimitation in this area is one between Libya and Italy, which would disregard Malta. That, in substance is the underlying theme of the Libyan case.

25. To all this Malta replies with a very simple contention, which paraphrases the formula appearing in paragraph 183 of the award in the *Anglo-French Continental Shelf Arbitration*: "Malta, however, does exist".

CHAPTER II

THE LEGAL BASIS OF THE LIBYAN CASE: NATURAL PROLONGATION

26. As the Libyan Memorial recalls, the claim formulated by Libya in 1973 rests in law on the proportionality of the length of the respective coastlines of the parties:

> "This draft agreement ... proposed a delimitation taking account of the difference in length of the Libyan and Maltese coasts".[1]
>
> "The distance between the two coastlines (Malta and Libya) was divided in the same proportion as the two shorelines bore to each other".[2]

On this juridical basis, Libya claimed a specific boundary which is
⑧ reproduced in Map 9 of the Libyan Memorial.[3]

27. In its Memorial submitted in the present case Libya has changed its claim in two respects.

28. First, Libya no longer claims any precise boundary and is content to contemplate, as a sequel to the judgement of the Court, an "agreement on a delimitation within, and following, the general direction of the Rift Zone as defined in this Memorial".[4] The Libyan claim is tainted by a double uncertainty. First, in limiting itself to claiming a boundary "within the Rift Zone", without further particulars,[5] Libya is referring to a zone more than 100 kilometres at its widest points, comprising a series of features lacking any single axis and within which it is possible to draw an infinite number of lines. The second uncertainty is that neither of the extremities, western nor eastern, of this so-called Rift Zone is clearly defined in geographical terms (as will more fully be developed in the next Chapter). In effect in failing to formulate any precise claim Libya refuses to acknowledge the proper scope of the Court's function.

29. The second change in the Libyan claim relates to its legal basis. No longer is proportionality invoked as the direct and principal justification for the Libyan position. Instead, reliance is placed upon natural prolongation. Malta's rights, so the Libyan Memorial argues, terminates, on the southern side, in the "Rift Zone", which marks the end of Malta's natural prolongation and its separation from the natural

---

[1] Libyan Memorial, p. 57, para. 4.33.

[2] *Ibid*. p. 58, para. 4.35.

[3] *Ibid*. p. 58.

[4] *Ibid*. p. 164, No. 9.

[5] *Ibid*. p. 126, para. 7.15; p. 133, para. 8.18; p. 149, para. 9.43; p. 159, para. 10.18.

prolongation of Libya; while, to the east, Malta's limits stretch only to the Escarpments–Fault Zone, and more particularly to the Sicily–Malta Escarpment, which is said to represent the end of the natural prolongation of Malta in this direction. Thus, it is natural prolongation "in its traditional character as a physical concept"[1] – that is to say, as determined scientifically – which forms the legal basis for Libya's case.

30. Malta will demonstrate in the next Chapter the ambiguities and the uncertainties of the so-called "Rift Zone" theory which is so essential an element in the Libyan claim that it is developed throughout the Memorial and appears in the final Submissions which conclude that text.[2] Malta will also identify Libya's mistakes in relation to the Escarpment–Fault Zone. In Malta's submission, the scientific aspects of the Libyan contention have no legal significance since the concept of natural prolongation in the purely physical sense is irrelevant to the international law of continental shelf boundary delimitation. In international law there is no such thing as a natural submarine boundary. This is why the purely factual scientific aspect of the Libyan case will be only briefly touched upon in the present Part. On the other hand, the legal aspect of the natural prolongation argument will be the subject of detailed consideration in Part III, Chapters I and II.

31. Without at this stage considering in detail the Libyan argument relating to natural prolongation, it is necessary to note straight away that the argument as presented now differs considerably from the argument as developed by Libya in the *Tunisia–Libya* case. True, Libya presents, in this case as in the previous one, a theory essentially constructed around the concept of natural prolongation in its physical sense, that is to say, as defined by natural science. However, apart from this point of similarity the present Libyan argument is in no way the same as was presented in the previous case. Indeed, in certain respects the two arguments are diametrically opposed.

32. In the *Tunisia–Libya* case, Libya accorded an essential role to what the Court has called "geology in its historical aspect" which describes "the evolution in the long-distant past",[3] and, more particularly, to the theory of plate tectonics. Libya, could then hardly find sufficiently strong language to criticize the importance which Tunisia attached to marine topography, and more particularly to geomorphology and bathymetry, as well as to the examination of present geological conditions. The judgment in the *Tunisia–Libya* case contains a summary of the arguments advanced by the two Parties in this connection at pp. 54–56, paras. 62–64.[4]

33. In the present case, on the contrary, this combination of the

---

[1] *Ibid.* p. 92, para. 6.28.

[2] *Ibid.* pp. 163–164.

[3] *I.C.J. Reports* 1982, p. 53, para. 60 and p. 54, para. 61.

[4] By way of example of the position then taken by Libya reference may be made to two passages in the Libyan Counter-Memorial: "... the bathymetry is of minimal relevance. As a fundamental geological concept, the superficial or topographical characteristics of the shelf – of which bathymetry is the most obvious – are not true indicators of prolongation"

(Footnote is continued overleaf).

geomorphological and geological elements is raised to the first rank.[1] In this combination geomorphology plays the essential part while geology, of which the task is to shed light on geomorphology is carefully limited – the point is repeatedly made – to "present day" conditions.[2] Libya is even careful to specify that "in this Memorial there is very little further discussion of plate tectonics as such".[3] To the same end, the Libyan Memorial states that the so-called Rift Zone is "the result of recent and current rifting activity"; this "Rift Zone" is young geologically and continues to stretch and shear the crust of the earth and deform the subsoil and sea-bed";[4] it is "still active".[5]

34. In short, while still resting its case on scientific grounds, Libya appears no longer to have confidence in the same scientific considerations as it had in the earlier proceedings.

35. Another difference relates to the territorial entity by reference to which, according to Libya, one must define the natural prolongation. In the *Tunisia/Libya* case, Libya referred to "the continental landmass" and to the "African landmass", essentially from the geological point of view. But this time, taking account of the Court's decision, Libya refers, very correctly, to "land territory", as understood in its political sense.[6] Occasionally, however, "land territory" becomes "landmass", but this is only for the purpose of referring to the size of the State rather than its geology. It is in this sense that the Memorial says:

> "... the size of the landmass should have some correlation with the extent and 'integrity' of its natural prolongation into and under the sea"[7]

This proposition will be discussed presently.

(p. 146, para. 344); — "bathymetry is not a factor of any importance in determining the extent of the Parties' natural prolongation" (p. 165, para. 413). See also p. 140, para. 137, and p. 163, para. 408. Compare the statements made by Sir Francis Vallat, Professor Bowett and Mr. Highet during the oral proceedings (*I.C.J. Pleadings*, Vol. V, pp. 57-58, 156-157, 220 and 226-227).

[1] See e.g. Libyan Memorial p. 90, para. 6.25; p. 91, para. 6.26; p. 92, para 6.28; p. 102, para. 6.55; p. 127, para. 8.01; page 134, para. 9.02, etc.

[2] *Ibid.* p. 35, paras. 3.01 and 3.02; p. 40, para. 3.41; p. 42, paras. 3.49 and 3.50; p. 43, para. 3.51, etc.

[3] *Ibid.* p. 28, para. 3.10.

[4] *Ibid.* p. 43, para. 3.52.

[5] Nonetheless, the geological history reappears in a number of places. Malta, we are told, emerged "less than 10 million years ago" (p. 40 para. 3.42). The "young" and the "recent" are themselves very relative as is shown by Professor Finetti's study (included by Libya in its *Technical Annex*): the "young rifting process" began "about 15 million years ago" (p. III–3); the "young volcanism" continued to "less than 10 million years ago" (p. III–6 and III–7). Libya also attempts to explain the shallow depths of the Malta and Medina Channels in comparison with troughs lying further west by recourse to geological history (p. 32 para 3.20 and p. 128 para. 8.04), as it does also the difference which it seeks to establish between "Rift Zone", on the one hand, and the Norwegian Trough and the Hurd Deep, on the other (p. 129 paras. 8.07 and 8.08). Even plate tectonics themselves sometimes surface again. It is "the same tectonics forces" which created the Malta Trough and "pushed up" the Maltese Islands (p. 128 para. 8.05); the Rift Zone is regarded by certain geologists as a new microplate boundary (p. 131 para. 8.12; p. 43 para. 3.51 etc.).

[6] See, for example, Libyan Memorial p. 89, para. 6.21; p. 97, para. 6.44; p. 102, para. 6.55; p. 127, para. 8.01 and also p. 163.

[7] *Ibid.*, p. 137, para. 9.12.

36. The scientific concept of natural prolongation thus defined by its geomorphological and geological elements lies at the heart of the Libyan legal argument. It is only by reference to this concept and in a manner subordinate to it that two other elements enter into the argument.

37. The first of these is the notion of relevant circumstances. In the *Tunisia–Libya* case, Libya attached an almost exclusive importance to the idea of natural prolongation (as it then conceived it). At that time Libya wrote:

> "Once the natural prolongation of a State is determined, delimitation becomes a simple matter of *complying with the dictates of nature* . . ."
>
> "There can . . . be no possible inequity in a delimitation which is consistent with the physical facts of natural prolongation".[1]

As the Court explained the point in summarising the Libyan argument in that Case, "for Libya, a delimitation which gives effect to natural prolongation is necessarily in accordance with equitable principles, since it respects the inherent rights of each State".[2] In contrast with this, Libya, in the present case, argues that delimitation should take into account (though under conditions which remain somewhat ambiguous – as will presently be seen) the relevant circumstances of the case and at the same time no less be submitted to the test of proportionality. Chapters III and IV in Part III will examine in greater detail these two aspects of Libya's legal case.

38. As regards proportionality, however, Libya has exerted itself to give this concept a low profile. Starting from a dictum in the Award in the *Anglo-French Continental Shelf Arbitration*, according to which "proportionality is not in itself a source of title to the continental shelf but is rather a criterion for evaluating the equity of certain geographical situations",[3] the Libyan Memorial asserts expressly that proportionality is not "a legal principle which itself gives rise to rights".[4] It sees in proportionality merely a "test of the equity of the result produced",[5] and it is under this modest heading of "test" that the Libyan Memorial examines what it calls an "ingredient" in the assessment of the reasonableness of the result.[6] Proportionality is also presented as an "element"[7] or again as a "factor or guide".[8] The Libyan Memorial further argues that this concept does not require "nice calculations or precise, mathematical relationships between coastal lengths and shelf areas"

---

[1] See Libyan Memorial in Tunisia–Libya Case paras. 89–90 and the Counter-Memorial para. 191.

[2] *I.C.J. Reports* 1982, p. 44, para. 39.

[3] Decision of 30 June 1977; *International Law Reports*, vol. 54, p. 6, para. 246.

[4] Libyan Memorial, p. 115, para. 6.90.

[5] *Ibid.* p. 97, para. 6.43.

[6] *Ibid.* p. 155, para. 10.06.

[7] *Ibid.* p. 97, para. 6.43; p. 115, para. 6.92.

[8] *Ibid.* p. 115, para. 6.90.

and is satisfied with "a broad, general comparison of sufficient flexibility to accommodate the overriding aim of achieving an equitable result".[1] Libya pushes its concern to down-play the role of proportionality to the point of presenting it as a factor not only bound but also subordinate to natural prolongation:

> "... proportionality as a factor or guide is intimately connected with the concept of the continental shelf based on natural prolongation; it may even be said that it is the logical consequence of this concept, since its purpose is to ensure that each natural prolongation will be accorded its proportionate weight".[2]

39. As will be seen in Part III, Chapter IV, the subordination of the proportionality argument to the natural prolongation argument, which the Libyan Memorial justifies on grounds of logic, is logically unsustainable. It is impossible to see by what miracle of nature the respective natural prolongations of the two States may be divided from each other by a feature of such a kind as the "Rift Zone" at precisely the same location as one might place a line based on the proportional relationship of the two coasts (and, even less, the proportional relationship of the areas of the two States). Even if one were to disregard Malta, and consequently identify in the so-called Rift Zone the "natural boundary" between Libya and Italy, could one then say that the test of proportionality is satisfied by the relationship between the Libyan coast and the Sicilian coast exactly as it is (according to the Libyan argument) between the coast of Libya and the coast of Malta? Again, if nature had placed a deep trench some miles from the Libyan coast – an even deeper Tripolitanian Furrow, for example – the shelf appertaining to Libya would be minuscule in comparison with that belonging to Malta. Would Libya then speak of proportionality as the "logical consequence" of the concept of natural prolongation? Whilst it is conceivable that a line dictated by natural prolongation may coincide with one dictated by proportionality it is to say the least, no less conceivable that it may also be different. In truth there is no logical connection – nor even any necessary compatibility – between the concepts of natural prolongation and proportionality.

40. Even if in practice proportionality plays in the Libyan argument a greater role than the Libyan Memorial wishes to suggest,[3] Malta may take courage from so restricted an assessment of the role of proportionality. There is, in the Libyan attitude, an implied – but significant – recognition of the legal weakness of any argument founded on proportionality.

---

[1] *Ibid.* p. 115, para. 6.91.

[2] *Ibid.* p. 115, para. 6.90.

[3] See below, Part III, Chapter IV.

CHAPTER III

THE KEY SCIENTIFIC CONCEPTS OF THE LIBYAN CASE: THE SO-CALLED RIFT ZONE AND THE ESCARPMENTS–FAULT ZONE

41. The argument of natural prolongation, which forms the legal basis for the Libyan claim, itself rests on two geographical concepts. The first is that of the "Rift Zone" which, according to Libya, forms the northern limit of the Pelagian Block and constitutes the natural boundary between the continental shelf of Malta to the south and the continental shelf of Libya towards the north. The second element, or geographical concept, is that of the Escarpments–Fault Zone which, according to Libya, forms the eastern boundary of the Ragusa–Malta Plateau and of the Pelagian Block and is the natural boundary of Malta's continental shelf towards the east. Libya contends that it is by the innermost of these two natural boundaries – the "Rift Zone" to the south, the Escarpments–Fault Zone to the east – that the continental shelf rights of Malta are enclosed. But for Libya, so the Libyan Memorial several times asserts, in the area east of the Escarpments–Fault Zone, continental shelf rights may extend freely in a northerly direction until they meet the continental shelf rights of Italy.

42. As Malta hopes presently to show,[1] the natural prolongation argument, as developed by Libya, entirely lacks support in international law. Whether the "Rift Zone" and the "Escarpments–Fault Zone" correspond or not to the description given in the Libyan Memorial, is entirely without legal interest. Quite different criteria are required by international law to form the basis of the delimitation of the continental shelf between Malta and Libya. It is, therefore, only out of respect for the Court that Malta proposes to review briefly in the present Chapter the errors and contradictions of the technical presentation contained in the Libyan Memorial. The Court will find a fuller scientific assessment of the two key features of the Libyan argument in a Technical Annex to this Counter-Memorial.[2] Malta is of course entirely ready to provide the Court with further explanations if these are called for.

---

[1] See Part III, Chapters I and II.
[2] Annex 2.

1. The “Rift Zone”

43. A preliminary remark is necessary regarding the expression the “Rift Zone”. The Libyan Memorial tends to give the impression that in this connection it is dealing with a physical entity which is easily identifiable and generally known under this name in maps and literature. The truth is quite otherwise. Of course – and Malta does not seek to deny this – a zone of faults and depressions exists in this part of the Mediterranean. However, it is no less true that neither the maps nor the literature identify this zone by the name “Rift Zone”. Particularly noteworthy in this connection is the absence of any such reference on ⑪ the IBCM, which is used as a basic scientific reference work in the Libyan Memorial. No less remarkable is the fact that the study by Professor Fabricius which Libya produced as an annex to its Counter–Memorial in the *Tunisia–Libya* case[1] spoke, in relation to this area, of the “Pantelleria–Malta Trench system”, of “the system of the Large Southeast-Northwest Grabens” and of “the rift system”.[2] Of the “Rift Zone” (with capital letters) no mention was ever made. But there is something even more extraordinary. In the Technical Annex to the Libyan Memorial in the present case the same Professor Fabricius, after having spoken a number of times of the “Rift Zone”[3] which he says “is often called the ‘Strait of Sicily’”,[4] goes on to write: “To look more closely at this fault zone (*called in the Memorial the ‘Rift Zone’*)…”.[5] In the same Technical Annex Professor Finetti’s study identifies this region of Grabens by the name “Sicily Channel”[6] or as “the rift zone area of the Sicily Channel”.[7] To describe the “Rift Zone” the Libyan Memorial invokes the authority of the French geologist, Winnock, saying that he describes the Pantelleria, Malta and Linosa Troughs “as part of what he calls the ‘Sicilian Channel’”.[8] The supposedly relevant passages from Winnock’s work are reproduced as Annex 7 to the Libyan Memorial. However, though Winnock speaks of the “Chenal de Sicile”, one may look in vain in the passages quoted by Libya for any mention of the “Rift Zone”. In at least two places in the Memorial Libya abandons all pretence regarding the origin of this nomenclature, to which it has attributed toponymic status. Thus one finds in the Libyan Memorial[9] the following: “What has been called in this Memorial the Rift Zone *for reasons of simplicity* …”; and again: “The *various features* that will be discussed *here combine to make up a rift zone* (*hereinafter referred to as the ‘Rift Zone’*) – a *feature* of major

---

[1] Annex 11 in Vol III.
[2] *Ibid.* pp. 13, 14 and 17.
[3] See for example, Technical Annex pp. I–4, I–5, I–11.
[4] *Ibid.* p. I–5.
[5] *Ibid.* p. II–3. Emphasis supplied.
[6] *Ibid.* p. III–2.
[7] *Ibid.* p. III–6.
[8] Libyan Memorial p. 29, para. 3.12.
[9] *Ibid.* p. 33, para. 3.20.

importance ...".[1] One could hardly recognize more clearly that the expression – even the concept – of "Rift Zone" has been conjured up by Libya without any basis in established scientific designation.[2]

44. Moreover, even what the Libyan Memorial calls the "Rift Zone" is not a trough which joins the western Mediterranean to the Ionian Sea. It is in no way comparable even with the Norwegian Trough or the Okinawa Trough and much less the Timor Trench. It does not constitute a simple "major feature". It is rather a succession of highs and lows, an accumulation of crests and winding valleys the depth of which varies from 645 metres to 1715 metres – a difference in height of more than 1 kilometre. There are it is true, in this morphological complex, three Troughs (Pantelleria, Malta and Linosa), of which the maximum depths are respectively 1314, 1715 and 1615 metres. But the Malta Channel and the Medina Channel have a depth which hardly exceeds 500 metres and even their inclusion as part of the same morphological complex is quite open to question. The passage in the report of the geologist Winnock quoted by Libya, and to which reference has already been made, does not in fact mention these Channels as part of the "Chenal de Sicile".[3]

45. Libya is evidently troubled by the shallowness of these two Channels, compared with that of the Troughs further to the west, as is shown by the embarrassed explanations which the Libyan Memorial gives for Libya's view that these two Channels constitute "eastward extensions" of the Troughs. What Libya says is, in other words, that one could assimilate the Channels to the Troughs, even though the former do not share the significant features of the latter.[4] From the Libyan Memorial one may observe, indeed, that it is in a very artificial way that the Libyan Memorial presents as a unique "Zone" a heterogeneous collection of extremely varied reliefs comprising the three large troughs, the intermediate crests, the submarine mountains and the simple channels. The considerably smaller rifting to the east of the Troughs and the consequent shallowness of the Malta and Medina Channels – as well as tactical considerations – compel Libya to ignore completely, or misrepresent as insignificant, the substantial rifting further south towards the Libyan coast, as is apparent in the Jarrafa Trough and the Tripolitanian Valley. These features will be examined shortly and are discussed in greater detail in the Technical Annex attached to this Counter-Memorial.[5] The point to be made here is that, having taken this position, it became necessary for Libya to give a geotectonic explanation for the evident difference between the Pantelleria, Linosa

---

[1] *Ibid.* p. 29, para. 3.21.

[2] It appears already in Figure 7 of the Libyan Counter-Memorial in the *Tunisia–Libya* case (p. 90), where its purpose was to show schematically the limits of the Pelagian Basin (see below, para. 50, on the subject of the northern limit of this Basin).

[3] See Annex 7 to the Libyan Memorial.

[4] Cf. Libyan Memorial p. 32, para. 3.20; p. 42, para. 3.50; p. 128, paras. 8.03, and 8.04; p. 131, paras. 8.11 and 8.12.

[5] Annex 2.

and Malta Troughs on the one hand and the Malta and Medina Channels on the other. As the Technical Annex will show, the explanation advanced by Libya is contradicted by well-established scientific facts. It will further show that the troughs to the northwest and those to the southeast of the Pelagian Block have the same cause.

46. But the most striking weakness in the theory of the "Rift Zone" can be seen by a mere glance at the maps produced by Libya itself. These show quite clearly that the deep and significant depressions and clefts of what the Libyan Memorial calls the "Rift Zone" (Pantelleria, Malta and Linosa Troughs) are to be found only to the west, northwest and southwest of Malta. Indeed, they lie beyond the western limits of the "relevant area" as seen by Libya itself.[1] They are, consequently, quite irrelevant to the delimitation of the shelf between Malta and Libya. In the area to be delimited between Malta and Libya the "Rift Zone" presents only a relatively elevated sea-bed and in any case one hardly sufficiently significant to warrant the weight accorded to it by Libya.

47. Nor does the "Rift Zone" have well defined contours. Its edges, especially to the south, are irregular, jagged and frayed by a variety of submarine ravines. In the east, the "Zone" is presented as terminating at approximately 16° E, at the intersection of the Heron Valley and the Sicily–Malta Escarpment. In reality, the Malta Trough is linked to the Ionian Sea by a corridor which is hardly conspicuous, very shallow and cut by crests and banks which follow the southern edge of the Malta Plateau with a swerving course. To the west, the uncertainty is even greater. On page 127, in paragraph 3.12 of the Libyan Memorial the "Zone" is described as beginning at 10° 30′. Later, on the same page and on pages 127–128, para. 8.03, it is said to begin at the Pantelleria Trough, to the east of the island of the same name. The two definitions do not correspond since the island of Pantelleria is situated at 12° E, thus well to the east of the 10° 30′ initially given. The overlay of Map 17[2] identifies the beginning of the "Rift Zone" at yet another point, more to the west-north-west than Pantelleria but less to the west than 10° 30′ – on this map at about 11° 20′. These inconsistencies regarding the limits of the so-called "Rift Zone" affect – as has already been noted – the very substance of the Libyan claim as much by the width of the "Zone" as by the lack of precision for its eastern and western limits. Thus, one may ask where in the west should the boundary line between Malta and Libya begin: at 10° 30′? at the Pantelleria Trough? or rather more to the west – and if so where? As to how a boundary line between Malta and Libya, of which the first segments evidently encroach on the delimitation effected by the 1971 agreement between Tunisia and Italy,[3] may be combined with this latter delimitation, the question is passed over in silence by the Libyan Memorial.

---

[1] Libyan Memorial p. 10, para. 10.17.

[2] Libyan Memorial, p. 160.

[3] See Map 15 of the Libyan Memorial.

48. The Libyan Memorial assigns to the so-called Rift Zone a precise and leading role namely that it "separates in a physical sense the natural prolongation of the Libyan landmass northward from the natural prolongation of Malta southward".[1] The "Rift Zone" is thus presented as a kind of natural frontier separating the physical feature lying to the north from that lying to the south. That is why the Memorial defines the "Rift Zone" as the northern line of the Pelagian Block (or Basin).[2] This is done in a further effort by Libya to reinforce at any cost the character of natural separation as the delimitation of the continental shelf.

49. In this connection one must heed the caution shown by Professor Fabricius in connection with the position adopted in the Memorial regarding the definition of the "Rift Zone" as the northern limit of the Pelagian Block:

> "The northern limits of the Block are defined in the Libyan Memorial as created by the Rift Zone . . . Other definitions adopted by some scientists place the northern boundary of the Pelagian Block along the African plate boundary running across Sicily or make the Block coextensive with the Pelagian Sea extending as far north as the Sicilian coastline".[3]

Refusing thus to acknowledge the paternity of the idea adopted in the Memorial, Professor Fabricius, limits himself to accepting a distinction between "a southern unit and a northern unit", the dividing line between units being the "Rift Zone"; and even such a distinction is accepted by him only for the purposes of description.

50. Nor is it without interest to recall that in the *Tunisia–Libya* case (to which the Libyan Memorial refers in connection with the Pelagian Block), Libya did not adopt the same view regarding the northern boundary of the Pelagian Block. The Libyan Memorial in that case described the Block[4] as lying "generally between 32°N and 36°N and added: "Its northern boundary runs along the Pantelleria Trough".[5] The 36°N parallel runs just north of the island of Malta and just south of the island of Gozo, so that the whole of the shelf area between Malta and Libya, apart from the area east of 15° 30′E, falls within the Pelagian Basin. Moreover in the *Tunisia–Libya* case, Libya treated this area as of fundamental continuity both geologically and geomorphologically. Figure 7 in the Libyan Counter-Memorial in that same case, of which the purpose was (according to note 2 on page 90) to set forth "the boundaries of the Pelagian Basin", placed the northern boundary of the Basin on the Sicilian coast, thus enclosing the "Pantelleria Rift Zone" within the Pelagian Basin. This basin is in turn defined in the same

---

[1] Libyan Memorial, p. 29, para. 3.12.

[2] *Ibid.* p. 27, para. 3.07; cf. p. 43 para. 3.52; p. 128, para. 805 etc.

[3] Technical Annex to the Libyan Memorial, p. I–4.

[4] Libyan Memorial; p. 27, para. 3.06.

[5] *Tunisia–Libya* case, Libyan Memorial para. 62 and Libyan Counter-Memorial page 10, Note 3.

Counter-Memorial[1] as "a geological and physiographic unit".[2] In an Annex to that same Counter-Memorial Professor Fabricius wrote – more explicitly than in the Technical Annex in the present case – that the Pelagian Block "extends to Sicily in the north".[3] And Professor Bowett, in his oral argument, told the Court that "some scientists place the boundary (of the Pelagian Block) even further north through Sicily".[4] In its 1982 Judgement, the Court itself said that the Pelagian Block "extends on the north at least as far as a series of large depressions (the Troughs of Pantelleria, Malta and Linosa)".[5]

51. It can thus be seen that the attempt in the Libyan Memorial to establish that the "Rift Zone" marks the boundary of the Pelagian Block towards the north and separates in a clear manner two distinct features is self-defeating.

52. Because of its attempt to persuade the Court of the existence of one – and one only – possible natural boundary, Libya is obliged to disregard the existence south of the "Rift Zone", between the latter and the Libyan shore, of geographical features which are at least as important as those of the "Rift Zone".[6] The Libyan Memorial refers several times to what it regards as a fairly even relief of the sea-bed between Malta and Libya: it speaks of "the gentleness of the slope",[7] of a "rather gently inclined depression"[8] and of the "smooth"[9] character of the seabed areas in this region.

53. However, this impression of topographical "mediocrity", which

---

[1] At page 90, para. 200.

[2] Contrary to its present position, Libya argued in the earlier case in favour of the fundamental continuity of the Pelagian Basin. By way of example here are some amongst other passages taken from the Libyan Counter-Memorial in the *Tunisia–Libya* case: "... the continental shelf area concerned is basically undifferentiated and forms part of the Pelagian Basin, a distinct geologic and geographic unit ... without marked features that would affect delimitation ..." (p. 10, para. 25); – "the continental shelf area is much like a gently rolling plain with no marked feature of importance ... We are dealing here with a simple shelf, a physiographic unit, part of the Pelagian Basin" (p. 103, para. 233); – "... the shelf is a single, physiographic unit without any significant feature that would remotely affect delimitation" (p. 147, para. 348); – "the geological evidence demonstrates the existence of a single continental shelf ... devoid of any significant features that could conceivably affect delimitation. *That shelf forms a portion of the Pelagian Basin which is itself a geologic and physiographic unit forming a component of the stable North African plate*" (p. 158, para. 391) Emphasis supplied; "The entire Basin area is a geological and physiographic unit ... there are no geologic or physiographic features of sufficient importance to influence a delimitation of the relevant continental shelf area" (p. 197, para. 491). The *Artist Rendition* which constitutes Figure 4 of the Libyan Counter-Memorial in the *Tunisia–Libya* case (p. 76) illustrates this continuity perfectly, especially between Malta and Libya, as does Figure 11 in the same Volume.

[3] See Vol. III, p. 13.

[4] CR 81/20, p. 19.

[5] *I.C.J. Reports* 1982, p. 41, para. 32.

[6] Professor Fabricius notes in the Technical Annex (p.I.–12) that there exist other faults (which, according to him, are less important) to the north as well as to the south of the "Rift Zone".

[7] Libyan Memorial, p. 35, para. 3.27.

[8] *Ibid.* p. 36, para. 3.29.

[9] *Ibid.* p. 37, para. 3.34.

⑪ Libya seeks thus to establish, is rebutted by the IBCM[1] itself which demonstrates the presence of two series of highly significant features which the Libyan Memorial passes over practically in silence.

54. First, one finds, to the south of the "Rift Zone" and at the very heart of the area to be delimited, two quadrilateral plateaux which rise sharply above the neighbouring bathymetric level: the Medina Bank (with a minimum depth of 146 metres) and the Melita Banks (with a minimum depth of 86 metres), which Professor Fabricius describes as being "part of a structural 'high' extending from the Lampedusa Plateau on the west to the Medina Escarpment on the east".[2] One may ask here why were these banks, of which the depth at no point exceeds 200 metres, which find themselves near enough mid-way between the two countries and which are particularly interesting in relation to hydrocarbon development, not given the same attention[3] as was given to the Malta and Medina Channels?

55. One also finds, south of the "Rift Zone", and also in the heart of the area to be delimited, several "valleys" with a more pronounced relief than Libya would have one believe[4] and of which the profiles are quite comparable to those of the Malta and Medina Channels (Jarrafa Trough, Medina Valley, Misurata Valley, Tripolitanian Valley). It is thus difficult to follow the Libyan Memorial when it states: "If one were to cross on foot a similar area by land, the "valleys" would not be discernible".[5] The Technical Annex of the present Counter-Memorial shows how mistaken the Libyan Memorial is on this point. The Jarrafa Trough, for example, is an important basin with an area of about 60 kilometres by 15, of which the gradient achieves 9.8 per thousand; and
⑪ the 400 metre isobath by which it is marked on the IBCM is very near the high of 86 metres of the Melita Banks. It is therefore difficult to understand the Libyan suggestion that the Jarrafa Trough "is not readily distinguishable from its immediate surroundings".[6] The figures opposite this page and those on the following pages[7] are illustrations of Malta's submissions on this matter.

56. Further to the south, as one approaches the Libyan coast lies the Tripolitanian Valley (or Furrow). In its 1982 Judgment the Court considered that:

> "The only feature of any substantial relevance is the Tripolitanian Furrow, but that submarine valley does not display

---

[1] A reduced copy of the IBCM is here reproduced for the convenience of the Court.

[2] Libyan Memorial Technical Annex, p. I–10. In the *Tunisia–Libya* judgement this area was referred to as "the 'Melita–Medina Plateau' covering the banks of Melita and Medina" (*I.C.J. Reports*, 1982, p. 41, para. 42).

[3] The mention of the Medina Banks at 33/3.21 is purely allusive.

② [4] It is perhaps significant that on Map 6 of the Libyan Memorial (p. 26) the names of the "valleys" situated south of the 34th parallel have disappeared despite the fact that the names of the depressions north of this parallel are faithfully included.

[5] Libyan Memorial, p. 37, para. 3.34.

[6] Libyan Memorial, p. 37, para. 3.32.

[7] See Figures 1–4.

> any really marked relief until it has run considerably further to the east than the area relevant to the delimitation".[1]
>
> "The greater part of it (the Furrow), and the most significant from a geomorphological aspect, lies beyond Ras Tajoura . . . ".[2]

In the *Tunisia–Libya* case the Court attached no importance to the Tripolitanian Furrow for purposes of delimitation, and this for two reasons: because the most significant part of the Furrow lies east of Ras Tajoura and because it is "comparatively near, and running roughly parallel to, the Libyan coast".[3] In these circumstances it could not have been taken into consideration unless it "were such as to disrupt the essential unity of the continental shelf so as to justify a delimitation on the basis of its identification as the division between areas of natural prolongation".[4] Disregarding the assessment thus made by the Court, the Libyan Memorial treats the Tripolitanian Valley as a minor feature, even to the east of Ras Tajoura.[5]

57. In order to diminish the importance of these "valleys", the Libyan Memorial seeks to characterise them as simply the result of erosion;[6] while the "Rift Zone" is said to be the result of structural causes such as volcanic activity. The Technical Annex to this Counter-Memorial shows how wrong this view is and that the geomorphology of the area between the "Rift Zone" and the Libyan coast is no less the consequence of structural causes.

58. Whatever the description one may wish to give to these various features, Malta maintains that the continental shelf lying between Malta and Libya is characterized by a fundamental geomorphological and geological continuity.[7] Moreover, as will be set out more fully in this Counter-Memorial, the areas of continental shelf appertaining to two States whose coasts are adjacent or opposite each other are not to be determined, according to international law, by reference to "natural boundaries" formed by geological or geomorphological features. It is to be observed in this connection that, contrary to what appears to be suggested in the Libyan Memorial,[8] neither the Italian–Tunisian Boundary Agreement of 1971, nor the Italian–Greek Agreement of 1977 is related in any way to any geomorphological feature and even less to the "Rift Zone". The Italian–Greek delimitation does not follow the Sicily–Malta Escarpment but has been constructed on the basis of a median line between the Italian and Greek coasts and islands. Evidently the Greek and Italian Governments did not consider that it would be equitable for the Greek plateau to be extended to the very

---

[1] *I.C.J. Reports* 1982, p. 57, para. 66.

[2] *Ibid.* p. 64, para. 80.

[3] *Ibid.*

[4] *Ibid.*

[5] Libyan Memorial, p. 36, paras. 3.30 and 3.31.

[6] See e.g. in relation to the Jarrafa Trough, p. 37, para. 3.32.

[7] Cf. Malta's Memorial, p. 21, para. 57 and Annex 2.

[8] p. 150, para. 9.51.

windows of southern Italy and of Sicily although this would have been consistent with the logic of the Libyan approach towards the "Rift Zone".[1] A glance at this same map is enough to show that the Italian–Tunisian delimitation, far from following the so-called "northwest – southeast axis" of the "Rift Zone", is also essentially an equidistance line and its axis in no way coincides with the "Rift Zone". Malta submits that the so-called "Rift Zone" does not dictate the boundary line any more than do the Melita–Medina Plateau or the Tripolitanian Furrow. If nevertheless, despite all contrary indications one wished to achieve a delimitation along the "natural boundaries", the Melita–Medina Plateau or the Tripolitanian Furrow would constitute natural features at least as significant as the Medina Channel or the Malta Channel if not more so. If there is, in this whole area, an insignificant feature it is that part of the so-called Rift Zone which lies between Malta and Libya.

2. THE ESCARPMENTS-FAULT ZONE

59. According to the Libyan Memorial, the Ragusa–Malta Plateau, on which, as Libya contends, Malta lies, ends in the east at the Sicily–Malta Escarpment, which thus constitutes "the physical boundary between the Ragusa–Malta Plateau and the Pelagian Block on the west and the Ionian seafloor on the east".[2] Libya sees this Escarpment not only as the end of the Ragusa–Malta Plateau but also as the end of Malta's natural prolongation[3] and concludes that the boundary line between the Maltese and Libyan continental shelves cannot extend any further east than the Escarpment.[4]

60. This Libyan argument can be valid only to the extent that it could be shown that the Escarpment – the existence of which cannot be denied – represents the eastern end of Malta's continental shelf. This Libyan contention has not been established either scientifically or legally.

61. First, on the scientific plane, it is not correct to say that the Escarpment represents the eastern end of Malta's continental shelf. According to the definition in Article 76 of the 1982 Convention on the Law of the Sea (which must in this respect be regarded as reflecting the present state of customary international law), the continental shelf extends "to the outer edge of the continental margin" and "the continental margin ... consists of the sea-bed and subsoil of the shelf, the slope and the rise". The Technical Annex annexed to this Counter-Memorial shows that it is not scientifically possible to maintain that the Escarpment forms the eastern limit of Malta's continental margin. Such

---

[1] Cf. Map 15 of Libyan Memorial at p. 150.

[2] Libyan Memorial, p. 34, para. 3.24; cf. p. 29, para. 3.09 and p. 41, para. 3.46.

[3] *Ibid.* p. 132, para. 8.15 and p. 133, para. 8.18.

[4] *Ibid.* p. 133, para. 8.18 and p. 153, para. 9.64.

a contention is certainly not true south of the 35th parallel; and north of the 35th parallel it is, to say the very least, disputable, with the experts divided on even whether the abyssal plain of the Ionian Basin is an old oceanic crust covered by a thick sedimentary sequence or a continental crust.[1]

62. On the legal plane, the question whether Malta's continental margin ends at the Escarpment (as Libya argues) or extends beyond it (as many scientists believe) makes not the slightest difference to Malta's continental shelf rights or to the delimitation of the continental shelf between Malta and Libya. The rule of customary international law reflected in Article 76 of the 1982 Convention defines continental shelf rights as extending "to a distance of 200 nautical miles... where the outer edge of the continental margin does not extend up to that distance". Even supposing for the sake of argument that Libya's thesis that Malta's continental margin does not extend beyond the Escarpments were correct, it would not affect either Malta's entitlement beyond those Escarpments or the delimitation of its continental shelf with Libya. The decisive importance which Libya attaches to the Escarpments as the eastern boundary of Malta's continental shelf rights is completely contradicted by present day principles and rules of customary international law. The matter need not, therefore, be further pursued.

---

[1] See Annex 2, para. 37.

CHAPTER IV

THE PRACTICE OF STATES DISREGARDED

63. Malta has already referred to the substantial State practice relating to geographical situations comparable to the circumstances of the present case.[1] This State practice takes the form of treaties and such agreements must be drawn up – at least in the framework of customary international law – "in accordance with equitable principles";[2] "in order to achieve an equitable result".[3] Consequently, boundary agreements carefully negotiated by governments constitute evidence of the view of those governments on the content of an equitable solution reflecting the application of equitable principles.[4]

64. Strange though it may seem, the Libyan Government has chosen to disregard the relevant State practice. It is true that the Libyan Memorial mentions State practice on three occasions but on each occasion the treatment involves a serious distortion of the significance of this important aspect of the case now before the Court.

65. The Libyan Memorial first of all mentions State practice in connection with equidistance. It notes that:

> "... in many agreements some consideration was given to other methods in delimiting the maritime areas concerned. Such methods reflected in these agreements include: modifying an equidistance line to give partial effect to islands; the use of partial or complete enclaves; lines reflecting an allocation of areas of sea-bed in proportion to respective coastal lengths; lines at right angles to a general line of coastal fronts; lines adopting a line of latitude or a fixed azimuth; and lines following a shipping route or channel".[5]

This statement is inexact in two ways. First the only precedents for "partial effect of islands" and the use of enclaves relate to *dependent islands. None of them* bear upon the position of Island *States*. Secondly even if it is true that certain agreements have used delimitation methods other than that of equidistance, it is no less true that the vast majority of agreements make use of an equidistance line, especially between States with opposite coasts. This is true as between continental States. Malta thinks it hardly necessary to provide the Court with a list of general precedents of this character. But it is also true as between States of which one is an Island State, as the examples cited by Malta in its Memorial[1] show. A recent study[2] of a substantial sample of seventy-five delimitation agreements affecting various regions in the world has led Dr. Jagota, legal adviser to the Indian Government and an expert who has had direct and extensive practical experience in the law of the sea, to draw the following conclusion:

---

[1] Memorial PART III, Chapter VII.

[2] *I.C.J. Reports* 1969, p. 53, para. 101.

[3] *I.C.J. Reports* 1982, p. 59, para. 70.

[4] In the award in the *Anglo-French Continental Shelf Arbitration* there are numerous references to the practice of States (paras. 85, 107, 200, 249, 251). Likewise the Court, which followed the same course in its 1982 judgment (p. 47, para. 45; p. 79, para. 109), has gone so far as to say that the concept of natural prolongation must be "examined within the context of customary law *and State practice*" (p. 46, para. 43).

[5] Libyan Memorial, p. 125, para. 7.12.

> "... in a large majority of cases States have been satisfied that the median or equidistance line leads to an equitable solution or result".[2]

66. The second instance of recourse by Libya to State practice is in connection with depressions and troughs in the sea-bed. As will be seen in Part III, Chapter II, the Libyan Memorial seeks to draw from this practice a manifestly partial and inexact picture.

67. The third mention of State practice in the Libyan Memorial appears in connection with the position in the Mediterranean as seen by Libya:

> "In the confines of the Mediterranean and in particular in the Central Mediterranean, if delimitation by equidistance were a panacea, one would have expected delimitation agreements on the basis of equidistance to have been rapidly completed. This has not been the case".[3]

Malta does not claim that equidistance is a "panacea" in the Mediterranean any more than elsewhere. What Malta says is that, in an absolutely incontestable manner, a large number of agreements – in truth, the vast majority – adopt an equidistance line for all or part of the boundary or, at least, use such a line as a point of departure and adjust it only to a small degree. Malta does not say, and has never said, either that the use of equidistance is compulsory or that it is a universally applicable method. As regards the Mediterranean in particular, the views expressed by Libya are rather superficial – as can readily be seen by referring to Map 2 of this Counter-Memorial and to the lists of boundary agreements between the Mediterranean States provided in the Maltese Memorial.[4]

---

[1] Malta's Memorial, pp. 61 to 78.

[2] S.P. Jagota, *Maritime Boundary*, *Hague Recueil*, Vol. 171, 1981 – II, p. 83, at pp. 130–131.

[3] Libyan Memorial, p. 152, para. 9.60.

[4] See pp. 96–103, paras. 196–200.

PART II

THE TASK OF THE COURT

THE TASK OF THE COURT

68. There appears to be some difference of position between the Parties regarding the task of the Court in the present case. Malta, which discussed the matter specifically in its Memorial,[1] reached the following conclusion:

> "Malta concludes that in the present case the task of the Court is to identify the principles and rules of international law applicable to the delimitation of the continental shelves of the two Parties with effectively the same degree of particularity as those principles were identified in the *Tunisia–Libya* judgment. The Court should indicate the boundary which, in its view, would result from the application of such method as the Court may choose for the Parties to achieve the relevant determination."[2]

In its Submissions[3] Malta makes two requests to the Court which specifically mirror these conclusions and invites the Court to make two findings – one as to the applicable principles and rules of international law, the other as to the application in practice of these principles and rules by means of a median line between the Parties.

69. Libya, on the other hand, without specifically addressing itself to the problem, by implication suggests a narrower view of the function of the Court. Perusal of the Libyan Submissions[4] reveals none pertaining to any *specific* line, but only a series of abstract legal propositions culminating in the following final submission:

> "9. The principles and rules of international law can in practice be applied by the Parties so as to achieve an equitable result, taking account of the physical factors and all the other relevant circumstances of this case, by agreement on a delimitation within, and following the general direction of, the Rift Zone as defined in this Memorial."[5]

70. The difference between the two sides is thus evident. Reduced to its essentials it is that Malta believes that the Court may, and should, do in this case much as it did in the *Tunisia–Libya* case. There, at pp. 93–94 of the operative part of the judgment, the Court indicated with

---

[1] Maltese Memorial, Part I, pp. 7–11.

[2] *Ibid.* p. 11, para. 22.

[3] *Ibid.* p. 135, para. 273.

[4] Libyan Memorial, pp. 163–164.

[5] *Ibid.* p. 164, para. 9.

some particularity the line of delimitation, specifying the division of the line into two sectors, the starting point of the first sector, the exact direction in which that line was to run to the point at which the second sector was to start and the direction of that sector. Only the extension of this line northeastwards was held by the Court to be a matter falling outside its jurisdiction. Libya, on the other hand, attributes to the Court a less significant rôle, claiming that it is for the Parties to apply the principles and rules "by agreement on a delimitation within, and following the general direction of, the Rift Zone as defined in this Memorial".[1]

71. The basis of Malta's identification of the task of the Court lies in the interpretation of the terms of the Special Agreement between Malta and Libya on which the Court's jurisdiction in the present case rests. The process of interpretation is significantly aided by the Court's interpretation of the similar agreement in the *Tunisia–Libya* case.[2] The fact that the latter agreement was concluded later than the agreement now under consideration makes no difference to the performance by the Court of its interpretative rôle, namely, that of determining the meaning of the words actually used. To this rôle the Libyan Memorial makes no direct allusion. Although some mention is made in the Libyan Memorial[3] to the preparation of the Special Agreement, no attempt is there made to draw any conclusions from the narrative of events. It is not, therefore, for Malta now to answer arguments which Libya has not put forward.

72. It may, however, be appropriate for Malta to recall, even at this stage, that the conclusion of the Court on this point in the *Tunisia–Libya* case was one on which there was no effective division of the Court. Such disagreement as there was related to the ground on which the Court reached its conclusion on this point, rather than on the conclusion itself. Thus Judge Gros in his dissenting opinion expressed his opposition to the Libyan position in terms of principle rather than interpretation alone,[4] and this approach also marked the statements made in his separate opinion by Judge Jiménez de Aréchaga.[5]

73. The position which Malta therefore reaches on this matter is that at this stage there is nothing more that it needs to say on the question of the task of the Court. It has set out its positive case in its Memorial, the main features of which are recalled above; and it adheres to that position.

74. At the same time, it is perhaps worth adding that Libya's final submission, to the effect that the principles and rules of international law can in practice be applied by the Parties "by agreement on a delimitation within, and following the general direction of the Rift

---

[1] *Ibid.* p. 164, para. 9.

[2] See Malta's Memorial, pp. 8–11.

[3] Libyan Memorial, pp. 66–69.

[4] *I.C.J. Reports* 1982, pp. 143–147.

[5] *Ibid.* pp. 101–103.

Zone"[1] is hardly responsive to the second part of Article I of the Special Agreement. It does not show how "in practice such principles and rules can be applied by the two Parties in this particular case in order that they may *without difficulty*[2] delimit such area by an agreement as provided in Article III." Even if Libya were to be one hundred per cent successful in its submissions, there would be no realistic prospect of the Parties agreeing "without difficulty" upon a line which even now Libya is not prepared to particularize. The "Rift Zone" exceeds 100 km at its widest, greater in width at the middle than at the ends. It is not straight but shaped like a boomerang. Such an area is capable of containing not simply one line but literally scores of lines, on the location and precise direction of which dispute could be endless. Given that the object of the present proceedings is to lead swiftly and surely to the resolution of the dispute between the Parties, the approach of Libya represents a prescription not for the settlement but for the indefinite prolongation of the problem.

---

[1] Libyan Memorial, p. 164, para. 9.

[2] Emphasis supplied.

PART III

CRITIQUE OF LIBYA'S SUBSTANTIVE CASE

CHAPTER I

THE PRINCIPLES AND RULES OF INTERNATIONAL LAW GOVERNING THE DELIMITATION OF THE CONTINENTAL SHELF

75. The Special Agreement asks the Court to decide, in the first place, "[W] hat principles and rules of international law are applicable to the delimitation of the area of the continental shelf which appertains to the Republic of Malta and the area of continental shelf which appertains to the Libyan Arab Republic". Chapter 6 of the Libyan Memorial contains "a succinct statement of the applicable law, as perceived by Libya",[1] and Chapters 7 to 10 apply the principles and rules there developed to the facts and circumstances of the present case. Malta submits that the statement of the applicable law contained in Chapter 6 of the Libyan Memorial contains a number of serious errors: the principles and rules of international law which Libya requests the Court to apply are not those principles and rules which international law has in fact developed in relation to the delimitation of the continental shelf. Although in disputes of this kind the Parties usually differ less on the principles and rules of the applicable law than on their application to the immediate facts, there exist in this case important differences of opinion between Malta and Libya on even the content of the applicable principles and rules. That is why Malta considers it necessary to proceed first, in the present Chapter, to a critical examination of the applicable law "as perceived by Libya" and to show briefly how Malta itself understands the relevant principles and rules of international law governing the delimitation of the continental shelf. The Chapters that follow in this Part will be devoted to a detailed examination, both in legal terms and in relation to its application to the present case, of the manner in which the Libyan Memorial resorts to natural prolongation, to relevant circumstances and to the test of proportionality.

1. THE SOURCES OF THE APPLICABLE LAW

76. As regards the sources of the rules applicable to the resolution of the dispute, the Libyan Memorial states:

> "In the present case, neither the 1958 Convention nor the Convention on the Law of the Sea apply – in the first case because

---

[1] Libyan Memorial, p. 81, para. 6.0.

21

> Libya is not a Party and in the second case because the Convention on the Law of the Sea is not yet in force and has not been signed by Libya. Given the absence of any treaty or convention providing rules directly applicable in the present dispute, it follows that the Court is asked to give expression to the principles and rules of customary international law".[1]

Malta agrees with this statement. The principles and rules of customary international law which the Court is invited by the Parties to determine and apply are those which result from the practice of States (including the evolution reflected in the Law of the Sea Convention of 1982) and from jurisprudence.

77. Of course, these rules of customary international law are not unchangeable and it is in the light of customary international law as it exists at a given moment that it is necessary to assess the concepts pertinent to a delimitation of the continental shelf. Thus the Court has referred to "the historic evolution of the concept of the continental shelf, from its inception in the Truman Proclamation ...[2] through the Geneva Convention of 1958, through the *North Sea Continental Shelf* cases and subsequent jurisprudence, up to the draft convention of the Third Law of the Sea Conference, and its evolution in State practice" and has also stated that it has "endorsed and developed those general principles and rules which have thus been established".[3] More particularly, on the question of natural prolongation the Court says that it "was and remains a concept to be examined within the context of customary law and State practice".[4] The concept of natural prolongation is thus one of which the scope and content may change – and have changed – with the evolution of customary international law. The same observation is applicable to all the other concepts relevant in this case: relevant circumstances, equitable principles, equitable result, proportionality, etc.

78. More particularly, as regards the Law of the Sea Convention, it is plain that no provision of this Convention binds the Parties as a treaty rule as such. It is no less evident, however, that the absence of a strictly contractual quality does not prevent this or that provision of the Convention from being regarded as embodying or crystallising a pre-existing or emergent rule of customary law.[5] It appears that Libya shares this opinion since it has relied in its Memorial on certain provisions of the Convention in support of its arguments. This is so particularly of articles 76 and 77[6], article 83[7] and article 121.[8] However,

---

[1] Libyan Memorial, p. 84, para 6.10.

[2] Proclamation 2667, Reproduced as Annex 3 to this Counter Memorial.

[3] *Tunisia–Libya Continental Shelf* Case, *I.C.J. Reports*, 1982, p. 92, para. 132.

[4] *Ibid.* p. 46, para. 43.

[5] Cf. *North Sea* Cases; *I.C.J. Reports* 1969, p. 41, para. 69 and *Tunisia–Libya* Case, *I.C.J. Reports* 1982, p. 38, para. 24.

[6] See Libyan Memorial, p. 82, paras. 6.04–6.07.

[7] *Ibid.*, p. 82, para. 6.04; p. 97, para. 6.42; p. 124, paras. 7.09–7.10.

[8] *Ibid.*, p. 111, para. 6.81.

when a provision of the Convention appears to Libya to be unfavourable to its argument it does not hesitate to disregard it, claiming that the Convention does not establish law between the Parties. It does this for example with what it calls "the new feature of the Convention on the Law of the Sea which uses distance..."[1]

79. When one mentions, as has just been done, provisions of the Convention on the Law of the Sea which reflect or express a customary rule, it is more broadly to the whole ensemble of the work of the Third Conference on the Law of the Sea on the pertinent question that one is referring.[2] This work obviously could not reflect new law during the first years of the Conference, at a time when the evolution of certain provisions was not yet sufficiently advanced. This explains the evident prudence with which this work was approached by the Court in the *Fisheries Jurisdiction* case in 1974[3] and by the Court of Arbitration in the *Anglo–French Continental Shelf Arbitration* in 1977.[4] In 1982, in the *Tunisia–Libya* case, the Court showed less reserve since at that moment the work of the Conference was much further advanced: the text of the draft Convention had been adopted by the Conference and the only step remaining was that of signature – a step which was taken a few months later. When referring to its observations of 1974, the Court said "it must however take note that the law-making process in this respect has now progressed much further",[5] and it added:

> "Furthermore, the Court would have had *proprio motu* to take account of the progress made by the Conference even if the Parties had not alluded to it in their Special Agreement; for it could not ignore any provision of the draft convention if it came to the conclusion that the content of such provision is binding upon all members of the international community because it embodies or crystallises a pre-existing or emergent rule of customary law".[6]

At present the draft Convention has become a Convention signed by numerous States, and it is clear that the position taken by the Court in the *Tunisia–Libya* case today finds itself considerably reinforced.

80. Among the provisions of the 1982 Convention which reflect the state of customary international law, particular attention must be directed to paragraph 1 of Article 76. In the *Tunisia–Libya* case the Court referred expressly to this provision and said that "the definition given in paragraph 1 cannot be ignored".[7] This text expresses two rules of customary international law. The first is that the rights of each coastal State in the continental shelf extend to a distance of 200

---

[1] *Ibid.*, pp. 89–90, para. 6.22.

[2] Cf. the remarks of Judge Oda in the *Tunisia–Libya* Case. *I.C.J. Reports* 1982, p. 172, para. 26.

[3] *I.C.J. Reports* 1974, pp. 23–24, para. 53.

[4] Decision of 30 June 1977, *International Law Reports*, Vol. 54, p. 6, paras. 47 and 96.

[5] *I.C.J. Reports* 1982, p. 37, para. 23.

[6] *Ibid.*, p. 38, para. 24.

[7] *Ibid.*, p. 48, para. 47.

nautical miles from its coasts – a provision which means, according to the language of the Court, that "the distance of 200 miles is in certain circumstances the basis of the title of a coastal State".[1] The second rule is that when the continental margin of a State extends beyond 200 miles the continental shelf rights of this State apply "throughout the natural prolongation of its land territory to the outer edge of the continental margin". If the Court did not, in the *Tunisia–Libya* case, take direct note of the concept of distance, it is – according to explanations which it gave in its Judgement – because the two Parties invoked only "the principle of natural prolongation" and "have not advanced any argument based on the 'trend' towards the distance principle".[2] The terms of Article 76, and particularly those concerning the "distance principle", also figured in several separate and dissenting opinions, as Malta has noted in its Memorial.[3]

81. In the same way, it is beyond doubt that the concept of the exclusive economic zone "may be regarded as part of modern international law", as the Court said in the *Tunisia–Libya* case.[4] The United States proclamation of an Exclusive Economic Zone on 10 March 1983[5] constitutes an additional confirmation of this recognition of the economic zone concept by customary international law. As a result, each coastal State possesses, to a distance of 200 nautical miles from its coasts, continental shelf rights over the sea-bed and subsoil and economic zone rights over the superjacent water column.[6]

82. The provisions just mentioned relate to the extension of coastal State rights towards the open sea and do not govern the determination of the limits between the maritime jurisdictions of States with opposite or adjacent coasts. It will presently be seen, however, that these provisions have a direct bearing on questions of delimitation.

2. LIBYA'S LEGAL CASE

(1) *Libya's Legal Presentation*

83. The Libyan Memorial adopts as the starting point of its legal reasoning what it presents as "an important legal distinction of considerable consequence for the present case".[7] On the one hand, so it argues, there is "the legal basis of a State's *entitlement* to shelf", the "basis or 'root' of title"; on the other, there are the rules governing the

---

[1] *loc.cit.*

[2] *Ibid.*, pp. 48–49, para. 48.

[3] Malta's Memorial, p. 123, paras. 251–252.

[4] *I.C.J. Reports* 1982, p. 74, para. 101.

[5] Reproduced as Annex 4 to this Counter-Memorial.

[6] Cf. the separate opinion of Judge Jiménez de Aréchaga in the *Tunisia–Libya* case, (p. 115, paras. 55–56) and the dissenting opinions of Judge Oda (p. 247, para. 145 and p. 249, para. 146) and Judge Evensen (p. 287, para. 9).

[7] Libyan Memorial, p. 81, para. 6.01.

precise *delimitation* of shelf boundaries. The Libyan Memorial suggests that international law accords an important, and sometimes even decisive, rôle to the concept of natural prolongation both in the determination of the legal basis of title and in the delimitation of the boundaries of the shelf between two States, but in different ways.

84. Where it is a question of determining the legal basis of a State's *entitlement* to shelf, natural prolongation, according to the Libyan Memorial, has not ceased to be the key concept which it has been from the Truman Proclamation[1] up to and including the Law of the Sea Convention. "The deliberations at the Law of the Sea Conference, have reinforced, rather than weakened, the fundamental concept of the continental shelf as being the natural prolongation of the land domain".[2] In a word, for the Libyan Government, "natural prolongation remains the fundamental basis of legal title".[3] Consequently, when one is delimiting the continental shelf of a State towards the open sea, "where no problems of delimitation with neighbouring States arise", the "outer limits" are controlled exclusively and directly by reference to natural prolongation – "entitlement and delimitation (in terms of absolute outer limits) go hand in hand when the issue is one of distinguishing between an area within natural jurisdiction and an area beyond it".[4]

85. But when it becomes a matter of "*delimitation*" between the areas of continental shelf belonging to two or more States, the function of the concept of natural prolongation is, according to the Libyan Memorial, more complex. The argument proceeds as follows. Before being able to claim a delimitation which attributes to a coastal State any area of shelf, the State must first establish that it has an "*entitlement*", a "*basis of title*", to such an area:

> "... as a first step, each Party has to prove that the natural prolongation of its land territory extends into the area in which the delimitation is to be effected".[5]

Once this is done the delimitation, properly so-called, may take place on the basis of a distinction which Libya characterises as "vital", "basic", or "fundamental" and which is set out in detail in two forms:[6]

(a) Where there exist two separate shelves, i.e. where neighbouring States are located on different shelves, in terms of distinct natural prolongations, "the evidence of 'natural prolongation' ... serves to establish the boundary between different shelves"; "legal entitlement and delimitation go hand in hand", and "the boundary should lie along the general line of that fundamental discontinuity".

---

[1] Annex 3.
[2] Libyan Memorial, p. 89, para. 6.20.
[3] *Ibid.* p. 89, para. 6.21.
[4] *Ibid.* p. 82, para. 6.06.
[5] *Ibid.* p. 89, para. 6.21.
[6] *Ibid.* p. 83, paras. 6.08 and 6.09; pp. 90–92, paras 6.24–6.29.

(b) Where there exists one continuous shelf adjoined by two or more States, i.e. where natural prolongations meet and overlap and where the shelf area may be regarded as much the natural prolongation of the one as of the other on the geological and geomorphological evidence, legal entitlement on the basis of natural prolongation and delimitation no longer have any necessary correlation. No doubt, the geological or geomorphological structure of the shelf, which characterizes natural prolongation, "remains the basis of the title of each and every adjoining State". Natural prolongation "in its traditional character as a physical concept" is, however, no longer "conclusive for delimitation purposes", no longer "sufficient to be determinative of a delimitation". The physical elements which determine the natural prolongation of a State do not, however, even in this situation, lose all legal relevance. Basing itself on paragraph 68 of the *Tunisia-Libya* judgement[1] the Libyan Memorial states that "a feature, which is not sufficiently substantial as to divide two distinct natural prolongations may continue to have significance as a relevant circumstance"; in this case, "the geological and geomorphological factors must be considered with other factors"[2]

86. Natural prolongation may thus be seen to lie at the heart of Libya's legal case. The Libyan Memorial speaks of the "double aspect" of natural prolongation: "as being, on the one hand, the basis of legal title to continental shelf areas and, on the other hand, a relevant factor in determining these areas between neighbouring States".[3] There are however three aspects of natural prolongation between which the Libyan argument suggests one must distinguish:

— as a basis of legal title: something which, according to Libya, exists in every case;

— as "conclusive" or "determinative" for delimitation between neighbouring States: something which exists in those cases where there are two physically distinct shelves;

— or as one of the relevant circumstances to be taken into account amongst others in seeking an equitable result: which is the case where neighbouring States abut on the same, continuous, shelf.

87. The fact that Libya defines natural prolongation by reference to physical evidence renders all the more surprising — and awkward — those passages in which Libya slides from the indisputable propositions that "the land dominates the sea"[4] and that "continental shelf rights are legally both an emanation from and an automatic adjunct of the territorial sovereignty of the coastal State"[5] towards a totally different

---

[1] Quoted at p. 101, para. 16.52 of the Libyan Memorial.

[2] *Ibid* p. 102, para. 6.53 and para 6.55.

[3] *Ibid.* p. 90, para. 6.23.

[4] *North Sea* Cases, *I.C.J. Reports* 1969, p. 51, para. 96.

[5] *Aegean Sea Continental Shelf* Case, *I.C.J. Reports* 1978, p. 36, para. 86.

concept. The Libyan Memorial appears not to hesitate to speak of "the geographic correlation between landmass and sea-bed which is the basis of title".[1]

Elsewhere the Libyan Memorial dots its i's when it says:

> "... the size of the landmass should have some correlation with the extent and 'intensity' of its natural prolongation into and under the sea".[2]

88. Malta must immediately respond to such a proposition. Where the Court has said quite clearly:

> "The geographic correlation *between coast and submerged areas off the coast* is the basis of the coastal State's title".[3]

the Libyan Memorial appears to say:

> "... the geographic correlation *between landmass*[4] and sea-bed ... is the basis of title".

As the Court said in the continuation of the same passage quoted above:

> "As has been explained in connection with the concept of natural prolongation, the *coast* of the territory of the State is the decisive factor for title ...".

The Court's emphasis is always on the "*coast*", not the "*landmass*", and even less on "the *size* of the landmass". The maritime jurisdiction of the coastal State depends on its coasts, not on the extent of its territory. The natural prolongation of a large coastal State does not have an "intensity" greater than that of a coastal State of smaller dimensions. The "size of the landmass" has absolutely nothing to do with the present case. To repeat the point, it is the equality of States in relation to maritime rights which is here put in question.

89. This said, the central argument of the Libyan Memorial is that, in relation to the present case, the natural prolongations of each of the two countries are geologically and geomorphologically separated from each other by the so-called Rift Zone. The "Rift Zone" thus marks simultaneously the limits of Malta's southern entitlement and Libya's northern entitlement and the boundary of the shelf between these two neighbouring States:

---

[1] Libyan Memorial, p. 114, para. 6.88. In support of this unexpected proposition, the Libyan Memorial refers to two passages in the *Tunisia–Libya* judgment. The first (p. 54, para. 62) speaks of "the natural prolongation of the landmasses into and under the sea ..." but does so as part of the statement of the Libyan argument (and not that of the Court) regarding the northward prolongation of the African landmass. As for the second (p. 61, para. 73), far from speaking of "landmass" – the word is not there – it stresses, on the contrary, that the only matter that counts is "the geographic correlation between *coast* and submerged areas off the *coast* ...".

[2] *Ibid* p. 137, para. 9.12.

[3] *Tunisia–Libya* Case, *I.C.J. Reports* 1982, p. 61, para. 73 Emphasis supplied.

[4] Emphasis supplied.

> "... the Rift Zone constitutes a fundamental discontinuity existing today in the sea-bed and subsoil and forms an actual separation in the natural prolongations of Libya northward and Malta southward. As such, the Rift Zone serves to 'point up' those portions of the continental shelf that are appurtenant to Libya and Malta inasmuch as it marks the limits of each State's area of entitlement to areas of continental shelf lying between them".[1]

For similar reasons the Libyan Memorial maintains that Malta is not entitled to claim continental shelf rights beyond the Sicily-Malta Escarpment, since this "terminates any natural prolongation east of Malta".[2]

90. Libya's legal argument as developed in its Memorial does not stop there. Although in the present case natural prolongation is, according to Libya, "conclusive" and "determinative" for the delimitation – since, in Libya's view, there are here two physically distinct shelves separated by the "Rift Zone" –, the delimitation thus obtained cannot be treated as definitive until after verification of its equitable character. Although in such a case, according to Libya's views, "legal entitlement and delimitation go hand in hand",[3] the determination of the limit of the natural prolongation of each country (in this case up to the "Rift Zone") is no more than "a first step",[4] and this limit may only be retained as the boundary of the areas of continental shelf belonging to each country "provided an obviously inequitable result is not reached".[5] The Memorial further acknowledges expressly that "there are situations in which natural prolongation is not in itself sufficient to be determinative of a delimitation, but where consideration of other relevant factors is required".[6]

91. If Malta has properly understood the Libyan argument, this control of the equity of the result achieved with the assistance of the criterion of natural prolongation (in the case always of two physically distinct shelves) is implemented in two forms. First, in checking whether

---

[1] Libyan Memorial, p. 132, para. 8.13; cf. p. 133, para. 8.17.

[2] *Ibid* p. 132, para. 8.15 and p. 133, para. 8.17.

[3] *Ibid.* p. 83, para. 6.09.

[4] *Ibid.* p. 89, para. 6.21; p.127, para. 8.01.

[5] *Ibid.* p. 91, para. 6.25.

[6] *Ibid.* p. 90, para. 6.23. In the *Tunisia–Libya* case, Libya maintained, as has already been noted, that, since the natural prolongation was in that case "determinable as a matter of scientific fact", there was no scope for according a rôle to equitable principles. A delimitation giving effect to the principle of natural prolongation, so Libya maintained, must necessarily conform with equitable principles (cf. *Tunisia–Libya* case, p. 44, para. 39). The Court rejected Libya's contention and stated that a delimitation in conformity with natural prolongation is not necessarily "appropriate" (*ibid.*, p. 46, para. 43). It said: "the two considerations – the satisfying of equitable principle and the identification of the natural prolongation – are not to be placed on a plane of equality" (*ibid.* p. 47, para. 44). For the Court, "satisfaction of equitable principles is, in the delimitation process, of cardinal importance" (*ibid.*). It is in order to fall in with this position of the Court that Libya has abandoned its previous contention and that it now quite properly introduced relevant circumstances for the purpose of verifying whether natural prolongation leads to an equitable result.

the circumstances relevant to the case allow one to consider the delimitation established "as a first step" as being equitable – in which case the delimitation may be confirmed; if not it must be modified. Secondly, in submitting the provisional delimitation to the "test of proportionality". Chapter 10 of the Libyan Memorial pursues this approach.

92. In considering the Libyan view of relevant circumstances conceived as a means of checking the equity of the result obtained by recourse to natural prolongation, attention must be paid to the last paragraph of Chapter 8 of the Libyan Memorial. There, after having determined "The Physical Limits of Natural Prolongation", which is the title of the Chapter, the Memorial says: "In the Chapter which follows it remains to be considered whether a delimitation boundary within the Rift Zone... would lead to an equitable result in light of the other circumstances relevant to this case".[1] It is also pertinent to observe that Chapter 9, which is concerned with "The Relevant Circumstances of this Case", defines these circumstances precisely as those "relevant to an equitable result in the particular case".[2] This Chapter concludes with the observation that the various relevant circumstances "... either support, or are compatible with, the view that an equitable result would be achieved by a delimitation within the Rift Zone..."[3].

93. The Libyan Memorial reveals a number of uncertainties and vagaries in the exposition and application of this juridical approach. Thus, so Libya maintains, in the case of two physically distinct shelves natural prolongation is "conclusive" or "determinative" of the delimitation (subject to the condition that the result be equitable in the light of the relevant circumstances and of the test of proportionality) while, in the case of a single and continuous shelf, natural prolongation is no more than one relevant circumstance amongst others. Given that, according to the Libyan argument, the so-called "Rift Zone" amounts to a marked separation of the continental shelves of Malta and Libya, it is difficult to understand why the Memorial examines at length and on two occasions the physical elements of natural prolongation in the present case as a relevant circumstance.[4] This contradiction at least indicates a lack of confidence in the thesis of marked separation.

94. Another uncertainty deserves to be mentioned. To the extent that it is the function of relevant circumstances, according to the Libyan argument, to verify the equity of the result obtained by reference to the concept of natural prolongation, it is difficult to see why those circumstances deemed to be relevant must – or even should – have some sort of relationship with the geological and geomorphological facts which define the continental shelf. There is certainly no such relationship in the circumstances invoked as relevant by the Libyan

---

[1] Libyan Memorial, p. 133, para. 8.18.

[2] *Ibid.* p. 134, para. 9.01.

[3] *Ibid.* p. 153, para. 9.64; cf. also p. 126, para. 7.15 *infine*.

[4] *Ibid.* at page 97 et seq. and again at page 134 et seq.

Memorial: geography, conduct of the Parties, security interests, islands, delimitations with third States. Why, then, does the Libyan Memorial reject economic considerations as not being relevant *per se* under the pretext that "such considerations have nothing whatever to do with the physical facts of prolongation of the land territory into and under the sea and the geographic correlation between landmass and sea-bed which is the basis of title"?[1] If this argument has any value – which it has not – none of the other relevant circumstances introduced by the Libyan Memorial would warrant a moment's retention.

95. Regardless of these relatively minor uncertainties and contradictions, the Libyan argument represents an interesting attempt at legal construction in an area where the rapid evolution of the law hardly facilitates the statement of clearly defined principles and rules. On certain points, as the Court will notice, Malta raises no objection to the way in which Libya perceives the relevant law. As to others, on the contrary, Malta cannot associate itself with the Libyan presentation. Malta will, therefore, in the pages which follow, identify those points in the Libyan argument which appear to diverge from customary international law and will at the same time set out its own view of the principles and rules of the international law applicable in the present case.

2. An Assessment of Libya's Legal Presentation

(a) *Entitlement and Delimitation : Outer limits and Boundaries*

96. Malta sees no objection to the legal distinction developed in the Libyan Memorial between the basis of title, which confers on a State an "entitlement to shelf", and delimitation. The first is a matter of determining the concepts on the basis of which a State is legally entitled to exercise a certain jurisdiction in maritime areas situated beyond its coasts; the second is a matter of drawing the boundary between maritime jurisdictions of two neighbouring States whose coasts are opposite or adjacent to each other. These two problems are clearly not identical; but at the same time they bear an intimate relationship to each other.

97. The "entitlement" or "basis of title" raises the question of the nature of the relationship between land and sea. It is because this relationship has developed from the sole purpose of the protection of coasts to the safeguarding of the resources of the sea-bed and subsoil thereof and, ultimately to an appropriation of all the resources of the sea lying beyond the coast, that the nature of the entitlement has changed and the different zones of maritime jurisdiction have come to be defined. Entitlement and legal basis of title are therefore intimately linked to the fundamental concepts of the law of the sea. Entitlement

---

[1] *Ibid.* p. 114, para. 6.88.

and basis of title thus refer essentially to the extension of maritime jurisdiction towards the sea.[1]

98. The dynamism of the extension of maritime jurisdiction towards the open sea is, however, restrained by the concern of the international community as a whole to avoid an indefinite enlargement of the marine areas which fall under national jurisdiction to the detriment of those areas which remain truly international. This is why international law has been led to fix outer limits for each of the different types of jurisdiction which have evolved over the course of the years, as is particularly shown by the evolution of the outer limits of the continental shelf between the time of the adoption of the 1958 Convention on the Continental Shelf and the conclusion of the Law of the Sea Convention of 1982. According to present day customary international law, the outer limits of the Continental Shelf may be considered as those which are defined in Article 76 of the Convention on the Law of the Sea.

99. As for delimitation, this term may be used *largo sensu* to include at the same time both the fixing of outer limits and the establishment of limits between the jurisdictions of neighbouring States. However it seems preferable – the two Parties are in agreement on this point – to reserve the term "delimitation" for the determination of maritime boundaries *between* neighbouring States with opposite or adjacent coasts. Thus understood, delimitation implies the necessity of fixing with precision, according to appropriate methods, the maritime rights of each of the States concerned. In the *Tunisia–Libya* case, the contrast drawn by Libya between "the outer limits of the shelf" and "boundaries between States" was even stronger than in the present case.[2]

100. The Court has itself had occasion to draw this distinction between the legal basis of title to the continental shelf and the delimitation of areas of continental shelf belonging to neighbouring States. In the *North Sea* cases, after having defined the "basic continental shelf doctrine" by reference to the concept of natural prolongation, the Court stated that this definition does not entail as a consequence "the existence of some rule by which those areas can be obligatorily delimited" between neighbouring States: "The appurtenance of a given area, considered as an entity, in no way governs the precise delimitation of its boundaries . . .".[3] In the *Tunisia–Libya* case the Court confirmed, with reference to the passage just quoted, the distinction "between a principle which affords the justification for the appurtenance of an area to a State and a rule for determining the extent and limits of such area".[4] The Court added: "Adjacency of the sea-bed to the territory of a coastal State has been the paramount criterion for

---

[1] The Libyan Memorial considers the definition contained in this Article as an "absolute" definition in the sense that it is applicable only in the case of "outer limits *where no problems of delimitation with neighbouring States arise*" (p. 82, para. 6.06).

[2] Libyan Counter-Memorial, pp. 130 and 132.

[3] *I.C.J. Reports* 1969, p. 32, para. 46.

[4] *I.C.J. Reports* 1982, p. 47, para. 44.

determining the legal status of the submerged areas, *as distinct from their delimitation* ...".[1]

101. This said, the nature of the distinction between the legal basis of title and delimitation needs to be clearly appreciated. It does not signify that the nature of the legal basis of title is without any bearing on the criteria and methods of delimitation. This is not a case of concepts which are unrelated one to the other. The Court clearly said in 1982:

> "... the 'principles and rules of international law which may be applied' for the delimitation of continental shelf areas must be derived from the concept of the continental shelf itself, as understood in international law ...".[2]

Developing this thought, the Court expressly stated that to the extent that contemporary international law makes the distance measured on the surface of the sea "the basis for the title of the coastal State" and, in consequence, "departs from the principle that natural prolongation is the sole basis of the title", it is this new legal basis which must intervene and be taken into consideration when a question arises of delimiting the continental shelf areas belonging to each of the two States:

> "It is only the legal basis of the title to continental shelf rights – the mere distance from the coast – which can be taken into account as possibly having consequence for the claims of the Parties".[3]

The direct impact of the legal basis of title on the rules governing delimitation could not be established more forcibly.[4] The Libyan attempt to isolate in some way the rules relating to delimitation from the evolution undergone by the theory of the continental shelf and the appearance of the concept of distance as the legal basis of title to continental shelf rights cannot be accepted.

102. To sum up: while the distinction drawn by the Libyan Memorial between *entitlement* and *delimitation*, and between *outer limits* and *boundaries between neighbouring States*, is valid in itself, it possesses neither the content nor the scope which Libya seeks to give it. The comments just made show that this distinction cannot justify the proposition in the Libyan Memorial that "as a first step, each Party has to prove that the natural prolongation of its land territory extends into the area in which the delimitation is to be effected"[5] and that, in certain cases (such as the present case), "the evidence of natural prolongation... serves to establish the basis for the boundary between different shelves. Thus legal entitlement and delimitation go hand in hand".[6] Chapter 8 of the Libyan Memorial, which seeks to examine

---

[1] *Ibid.* p. 61, para. 73. Emphasis supplied.

[2] *Tunisia–Libya* case, *I.C.J. Reports* 1982, p. 43, para. 36. This link was also affirmed in the *Anglo–French Continental Shelf Arbitration*, para. 77 *in fine*.

[3] *Tunisia–Libya* case, *I.C.J. Reports* 1982, p. 48, para. 48.

[4] See also *Aegean Continental Shelf* case, *I.C.J. Reports* 1978, p. 35, para. 84.

[5] Libyan Memorial, p. 89, para. 6.21.

[6] *Ibid.* p. 83, para. 6.09.

"the physical factors of geomorphology and geology... in order to determine the limits of the natural prolongation of Libya and Malta relevant to a delimitation in this case",[1] is therefore radically *outside the legal principles which the Court has laid down.*

(*b*) *The Delimitation Process*

103. As has been shown above, Libya sees what the Court in the *Tunisia–Libya* case has called the "delimitation process"[2] as an operation in two stages:

(*a*) the first, common to all cases, consists of the establishment of the natural prolongation of each Party in its physical sense "as a first step";

(*b*) the second depends on whether one is faced by one or the other of the following two situations:

– where there are two physically distinct shelves, delimitation must be effected along the line of their physical separation (subject to achieving an equitable result in the light of the relevant circumstances and the application of the test of proportionality);

– where there exists only a single continuous plateau within which the delimitation is to take place, the physical features of this plateau are one relevant circumstance amongst others to be taken into consideration.

104. Libya's argument is that in the present case the first situation exists so that the determination of the respective physical and natural prolongation of Malta and Libya operates by itself to delimit their continental shelf rights, subject to the control of achieving an equitable result.

105. On the other hand, the Libyan Memorial is not very explicit in the way in which it conceives the operation of delimitation in the second situation. Until now, it has been this second situation – that is to say, the existence of one and the same continuous continental shelf on which there is no physical feature sufficiently "significant" to constitute "a natural submarine frontier" – which has existed in all the cases hitherto submitted to judicial or arbitral settlement. As regards the Pelagian Basin (or Block) itself, it has been seen that Libya insisted strongly in the *Tunisia–Libya* case on its fundamental geological unity and resisted Tunisia's attempts to identify in this Basin (or Block) those natural features which might serve as the natural boundaries of the two countries.[3] Malta has shown that the continental shelf between Malta and Libya is effectively characterized by an essential unity and a fundamental continuity on the physical plane. However that may be, Libya has chosen to assert in the present case the existence of a so-

---

[1] *Ibid.* p. 127, para. 8.01.

[2] *I.C.J. Reports* 1982, p. 47, para. 44.

[3] Cf. Judgement in the *Tunisia–Libya* case, *I.C.J. Reports* 1982, p. 57, para. 66. See also above para. 50 and footnote 3.

called "Rift Zone" interrupting the physical continuity of the shelf and creating two physically distinct shelves, one belonging to Malta, the other to Libya. That is probably why Libya did not consider it useful to set out in detail in its Memorial the rules which it considers applicable to the delimitation of a single and continuous continental shelf.

106. The proof which the Libyan Memorial requires each Party to provide "as a first step" that its natural prolongation "extends into the area in which the delimitation is to be effected" does not really help the delimitation process since each Party can provide this proof for the whole extent of the shelf which is to be delimited. It is no more a question of verifying a delimitation achieved on the basis of physical and natural prolongation by testing it against the relevant circumstances, geographical and otherwise. The relevant circumstances may certainly be taken into consideration but it is then they who directly dictate the solution, and are not merely a method of *verifying* the equity of the solution reached on the basis of natural prolongation. Instead of an operation in two stages, there is really only one single operation – in which natural prolongation plays no more than the associated rôle of being one factor amongst others.

107. The concept of the delimitation process developed by the Libyan Memorial is flawed, in Malta's opinion, by two objections. One – which will be examined immediately – relates to the rôle which relevant circumstances are required to play in this process. The other – even more fundamental, if this is possible – relates to Libya's understanding of the legal basis of title to continental shelf rights – and will be examined in Chapter II.

108. Relevant circumstances certainly occupy a leading place in the delimitation process. This concept does not appear as such in the 1958 Convention on the Continental Shelf, of which Article 6 mentions only "special circumstances" of such kind as to lead to a delimitation other than by means of an equidistance line. The difference between the two concepts is clear: while "special" circumstances do not exist in every concrete situation, "relevant circumstances" exist inevitably in every case. The award in the *Anglo-French Continental Shelf Arbitration* has however shown that the operation of the "combined equidistance – special circumstances rule" leads in practice to "the full liberty of the Court in determining the geographical and other circumstances relevant to the determination of the continental shelf boundary".[1] It was the Court which in 1969 introduced for the first time the expression "relevant circumstances" into the law relating to the delimitation of the continental shelf ("delimitation is to be effected ... taking account of all the relevant circumstances ..."[2]) and this term was subsequently much used in the award in the *Anglo-French Continental Shelf Arbitration* of 1977 and in the *Tunisia-Libya* judgment of 1982. The fact that the

---

[1] Decision of 30 June 1977, *International Law Reports*, Vol. 54, p. 6, para. 69.

[2] *I.C.J. Reports* 1969, p. 53, para. 101.

expression does not appear in Article 83 of the new Convention on the Law of the Sea does not mean that it has lost its importance in the delimitation process. But its precise rôle has yet to be defined.

109. First, it is certain that the task of the judge or arbitrator cannot be reduced to a mechanical or automatic one, allowing a predetermined solution to be drawn from relevant circumstances. Relevant circumstances do not amount to a *diktat*, but require the active intervention of a judge or arbitrator who takes a decision "having regard to relevant circumstances" within the framework of his discretionary power. The judicial or arbitral decision "is very much a matter of appreciation in the light of the geographical and other circumstances".[1] Similarly, in the *Tunisia–Libya* case the Court held that its task consists of "balancing up the various considerations which it regards as relevant".[2]

110. Secondly, the power of appreciation of the judge or arbitrator must keep a reasonable distance from two extremes. On one side the judge or arbitrator must avoid the application of any too general or abstract a rule. Recourse to relevant circumstances, differing in kind from one case to another, enables him easily to avoid this risk. Thus he can achieve his objective of an equitable or reasonable solution, since "it is clear that what is reasonable and equitable in any given case must depend on its particular circumstances".[3] In other words "each continental shelf case in dispute should be considered and judged on its own merits, having regard to its peculiar circumstances, therefore, no attempt should be made... to overconceptualize the application of the principles and rules relating to the continental shelf".[4] As in any other situation, excessively general rules of law, neglecting the particular facts of a case, will lead to unjust or unreasonable solutions.

111. On the other hand however, an excessive individualisation of the rule of law, which changes from one case to another, would be incompatible with the very concept of law. Every legal rule presupposes a minimum of generality. A rule which is elaborated on a case by case basis rests on the discretionary power of the judge, on conciliation, on distributive justice – in brief, on *ex aequo et bono*. The risk of excessive individualisation is even more real when there exists no definition which permits one to identify the circumstances to be treated as relevant or the criteria enabling one to assess the respective weight of the circumstances. The Court recognised this as early as 1969: "In fact, there is no legal limit to the considerations which States may take account of... The problem of the relative weight to be accorded to different considerations naturally varies with the circumstances of the case".[5] In other words, the taking of relevant circumstances into consideration avoids the application of any automatic rule, but this

---

[1] *Anglo–French Continental Shelf Arbitration*, Decision of 30 June 1977, para. 70.

[2] *I.C.J. Reports* 1982, p. 60, para. 71.

[3] *Ibid.* p. 60, para. 72.

[4] *Ibid.* p. 92, para. 132.

[5] *I.C.J. Reports* 1969, p. 50, para. 93.

must be done in such a way as not to deprive the delimitation of its intrinsic legal character. The Court said this in 1982: "While it is clear that no rigid rules exist as to the exact weight to be attached to each element in the case, this is very far from being an exercise of discretion or conciliation; nor is it an operation of distributive justice".[1]

112. It follows that the taking into consideration of relevant circumstances never occurs on its own in the delimitation process, but it always and in every situation, plays a rôle of extreme importance. This statement will be considered in its two parts.

113. In the first place, *relevant circumstances never suffice by themselves to establish the boundary line.* As has been seen they do not dictate this line to a judge or arbitrator in an automatic fashion. Nor are they the sole element of which a judge or arbitrator must take account in exercising the power of "appreciation" accorded to him by the jurisprudence. Although the judge or arbitrator does "take into account" relevant circumstances, his decision will still not be a direct and exclusive consequence of the examination of relevant circumstances alone. Another element plays an important part – that of identifying the legal basis of title to continental shelf. The legal nature of "entitlement" to continental shelf rights has a decisive rôle in the delimitation process, and it cannot be otherwise unless one considers delimitation as a mere mechanical operation having no relationship with the fundamental concepts of the continental shelf – something to which the Court was clearly opposed both in 1969 and 1982. The Libyan Memorial is open in this connection to two objections. The first is that it satisfies the requirement of taking into consideration the legal basis of title only when the situation is one of two physically separated shelves, and it neglects it when the case is one of a single and continuous shelf. Secondly, as Malta will show in the next Chapter, even in the case of physically distinct shelves, Libya has recourse to a legal basis of title which is out of harmony with the present state of customary international law.

114. Secondly, *relevant circumstances are always present in the process of delimitation.* The two Parties appear to be in agreement on this point. As to their function, the Libyan Memorial properly describes it as consisting of verifying whether the delimitation suggested by the recourse to the legal basis of title is equitable and reasonable. *Relevant circumstances thus do not have the rôle of suggesting, and still less of dictating, to the judge or arbitrator a given boundary line, but rather of enabling him to achieve an equitable and reasonable solution.* The examination of relevant circumstances forms an integral part of the search for an equitable result, and it is at the stage of seeking an equitable result that it is proper to conduct this examination. The *Tunisia–Libya* judgment speaks of "... circumstances considered to be the elements of an equitable solution",[2] and mentions in the dispositif

---

[1] *I.C.J. Reports* 1982, p. 60, para. 71.

[2] *I.C.J. Reports* 1982, p. 58, para. 68.

"the relevant circumstances... to be taken into account in achieving an equitable delimitation".[1] As for equitable principles, ultimately they signify nothing other than the requirement of looking at the relevant circumstances of the case for the purpose of achieving an equitable result. This is reflected in the passage of the award in the *Anglo-French Continental Shelf Arbitration* which says: "Any ground of equity, the Court considers, is rather to be looked for in the particular circumstances of the present case..."[2]. The same was, with equal clarity, stated by Judge Jiménez de Aréchaga in his separate 1982 opinion when, to the question "What... is the meaning of equity in this field?", he replied – referring to the 1977 Award – that the latter "gave a positive content to the notion of equitable principles as applicable in this context by linking them to the circumstances of each case".[3]

In sum: relevant circumstances do not provide the original basis for delimitation, but rather have the status of criteria for evaluating the equitableness of a delimitation *prima facie* indicated by the geographical facts.

115. If the analysis in the above paragraphs is correct the description of the delimitation process in conformity with the principles and rules of international law gives rise to no further difficulties.

116. As a first step, it is necessary to take account of the legal basis of title, or, alternatively, of the very concept of the continental shelf itself since, according to the dictum in the *Tunisia-Libya* judgment, the principles and rules of international law applicable to delimitation "must be derived from the concept of the continental shelf itself, as understood in international law".[4]The following chapter will show that, contrary to the position of the Libyan Memorial, it is not natural prolongation "in its physical sense" which is the appropriate basis of title, but natural prolongation in its legal sense of a spatial distance from the coasts measured at the surface of the sea. The same chapter will show that giving due consideration to the distance principle leads, as a first step – provisionally, not definitively – to an equidistance line.

117. This first approach, purely provisional and tentative, is followed at a second stage by taking into consideration the relevant circumstances of the case. If this consideration leads to the conclusion that the line emerging from the first stage is inequitable or unreasonable it must be adjusted or even, in certain cases, combined with other methods. The question of proportionality, when the concrete situation renders recourse to it appropriate, will also be examined in order to assess the reasonable or equitable character of the result. Chapters II to IV which follow will be devoted to a specific examination in relation to the delimitation process of the legal basis of title, of relevant circumstances and of the test of proportionality.

---

[1] *Ibid.* p. 93, para. 133B.

[2] Decision of 30 June 1977, *International Law Reports*: Vol. 54, p. 6, para. 195, cf. para. 97.

[3] *I.C.J. Reports* 1982, p. 105, para. 22.

[4] *Ibid.* p. 43, para. 36.

CHAPTER II

THE LEGAL BASIS OF TITLE AND THE DELIMITATION PROCESS: THE CONCEPT OF NATURAL PROLONGATION

118. It is appropriate to recall that, according to the Libyan Memorial, natural prolongation has a "double aspect". First, it constitutes the basis of legal title to continental shelf areas. Secondly it has a rôle in the delimitation process: that of identifying the boundary when there exist two sharply distinct natural prolongations; that of a simple circumstance or relevant factor when the separation of the two natural prolongations is not sufficiently marked.

119. It is also appropriate to recall that natural prolongation is seen by Libya "in its traditional character as a physical concept", that is to say, by reference to its present geomorphological elements. On the basis of this legal concept, Libya presents the so-called Rift Zone as the appropriate boundary in the present case. Geomorphologically, Libya argues, the "Rift Zone", with its succession of troughs and channels, presents features of great depth, in contrast to the surrounding sea-bed, appears "to have steep flanks and to be of considerable size"[1] Geologically, so the Libyan Memorial suggests, the "Rift Zone" is "the result of recent and current rifting activity". The result of this conjunction of geomorphological and geological factors, Libya suggests, is that "the Rift Zone constitutes a fundamental discontinuity existing today in the sea-bed and subsoil and forms an actual separation in the natural prolongations of Libya northward and Malta southward".[2] Towards the east, adds Libya, the natural prolongation of Malta ends in the Sicily–Malta Escarpment, as a result of which Malta has no continental shelf rights extending beyond this other geological and geomorphological "feature of major importance."[3]

---

[1] Libyan Memorial, p. 128, para. 8.03.

It should be remembered that it is above all in relation to the three Troughs (Pantelleria, Malta and Linosa) that the Libyan Memorial insists on the marked character of the depth and shape. The Libyan Memorial recognises that the Malta and Medina Channels, are more discrete features and it is content to present them as an "extension eastward" of the Troughs (see above, para. 44). Between Malta and Libya there are no troughs but only channels. For a particularly graphic illustration see Figure 11 in the Libyan Counter-Memorial in the *Tunisia–Libya* case, opposite page 104, and Figure 4, page 76.

[2] Libyan Memorial, p. 132, para. 8.13.

[3] *Ibid.* pp. 132–133, paras. 8.14–8.18.

120. Malta will in the present Chapter show, first, that the theory developed in the Libyan Memorial is legally unsound.[1] In the purely physical sense given to it by Libya, natural prolongation does not constitute the legal basis of title to continental shelf rights and, by the same token, cannot play the rôle that Libya wishes to accord to it in the delimitation process. Malta will then set out the rules of international law applicable to the delimitation process in the light of the entitlement to continental shelf rights as understood by Malta.

1. LIBYA'S CONCEPTION OF NATURAL PROLONGATION IS NOT IN ACCORDANCE WITH INTERNATIONAL LAW

121. By way of dealing with the Libyan theory of natural prolongation, it will be convenient to recall some elements in an evolution which has often been described – the latest occasion being the Court's own judgment in the *Tunisia–Libya* case.

(1) *Legal Basis of Title*

122. There can of course be no doubt that physical considerations lie at the origin of the continental shelf concept – as was stated by the Court itself, not only in 1969[2] but also in 1982.[3] Nor can there be any doubt that "the legal concept, while it derived from the natural phenomenon, pursued its own development"[4] and that this development consisted of a "widening of the concept for legal purposes".[5] The definition given by the Court in 1969 still remains valid fifteen years later; the continental shelf of a State "constitutes a natural prolongation of its land territory into and under the sea ... a prolongation or continuation of that territory, an extension of it under the sea".[6] But the meaning and content of the concept of prolongation has evolved. Prolongation is no longer defined by reference to physical features, whether geological or bathymetric, but by reference to a certain distance from the coasts. It is this fundamental development that the Libyan Memorial disregards, overlooking in doing so the principle stated by the Court: "The concept of natural prolongation... was and remains a concept to be examined within the context of customary law and State practice".[7]

123. In truth, natural prolongation in the physical sense – geomorphological and geological – has at no time alone formed the legal basis of title to continental shelf rights. Before the 1969 Judgment, in which

---

[1] Errors of fact affecting the description of the region in the Libyan Memorial have been set out in Part I of the present Counter-Memorial paras. 41–62.

[2] *I.C.J. Reports* 1969, p. 51, para. 95.

[3] *I.C.J. Reports* 1982, p. 45, para. 41.

[4] *Ibid.* p. 46, para. 42.

[5] *Ibid.* p. 45, para. 41.

[6] *North Sea* cases, *I.C.J. Reports* 1969, p. 22, para. 19 and p. 31, para. 43.

[7] *Tunisia–Libya* Case, *I.C.J. Reports* 1982, p. 46, para. 43.

the expression "natural prolongation" was introduced "as part of the vocabulary of the international law of the sea",[1] neither the work of the International Law Commission nor Article 1 of the Geneva Convention of 1958 on the Continental Shelf had seen the theory of the continental shelf and natural prolongation in its physical sense to be identical. From that moment there was thus established what the Court has called "the lack of identity between the legal concept of the continental shelf and the physical phenomenon known to geographers by that name",[2] in particular by the introduction of the criterion of exploitability. It is interesting to note that from the time of the first work of the International Law Commission in 1953, certain members had suggested defining the continental shelf by reference to distance from the coast, regardless of depth.[3] At that time the attention of the Commission was also drawn to the case of those States which do not have a continental shelf in the physical sense and to the inequality that an exclusively physical definition of the continental shelf might introduce to the detriment of such States. One member of the Commission observed that "If a geological definition were now adopted, States like Chile and Peru, which had no continental shelf in the geological sense of the word, would be placed at a serious disadvantage."[4] It was also in 1953 that the Commission envisaged the case of areas of which the depth exceeded 200 metres situate near the coast of certain countries and separating these from areas with a depth of less than 200 metres. In such cases the Commission recognised that the physical concept must admit of an exception.[5] This opinion was confirmed by the Commission in the commentary on its Draft Articles of 1956.[6]

124. The 1969 Judgment in the *North Sea* cases confirms the limited rôle of physical features in the definition of the continental shelf.[7] In 1969 the Court had no intention to reopen the question of the rights of Norway over the areas of continental shelf in the North Sea situate beyond the Norwegian Trough acknowledged by the delimitation agreements concluded with the other States bordering on that sea.[8] As Judge Jiménez de Aréchaga concluded:

> "Consequently, it is not possible to interpret the term 'natural prolongation' in the 1969 Judgment as reintroducing into the definition of the continental shelf the geological and geomorphological elements which had been left out by the International Law Commission in 1956 and by the Conference in 1958".[9]

---

[1] *Ibid.*

[2] *Ibid.* p. 46, para. 42.

[3] *Yearbook of the International Law Commission* 1953, Vol. II, p. 9.

[4] *Ibid.* Vol. I, p. 73.

[5] *Ibid.* Vol. II, p. 214, para. 66, *Report to the General Assembly*. Cf. Judge Jiménez de Aréchaga, Sep. Op. *I.C.J. Reports* 1982, p. 111–2, para. 43.

[6] *Yearbook of the International Law Commission* 1956, Vol. II.

[7] Cf. *Tunisia–Libya* Case, *I.C.J. Reports* 1982, p. 46, para. 42 *in fine*.

[8] *North Sea* cases, *I.C.J. Reports* 1969, p. 32, para. 45.

[9] *I.C.J. Reports* 1982, Sep. Op. p. 112, para. 46.

125. The award in the *Anglo–French Continental Shelf Arbitration* of 1977 fully supports these views. It said: "the very fact that in international law the continental shelf is a juridical concept means that its scope and the conditions for its application are not determined exclusively by the physical facts of geography but also by legal rules"[1].

126. The work of the Third Law of the Sea Conference pushed even further this lack of identity between the concept of the continental shelf and the purely physical elements. To the end, essentially, of assuring the equality of all coastal States – whether or not they had a continental shelf in the physical sense of the term and whatever might be its extent – the Conference recognized to all States continental shelf rights to a distance of 200 nautical miles from their coasts. In other words, the natural prolongation of each coastal State today automatically extends at least to a uniform distance of 200 miles from its coast. The concept of natural prolongation has thus become a purely spatial concept which operates independently of all geomorphological or geological characteristics. It is only beyond 200 miles that it resumes a physical significance, since the States which possess a more extensive physical natural prolongation enjoy continental shelf rights to the edge of their continental margin. Up to a distance of 200 miles from the coast, it is, therefore, in a combination of these concepts of coast and distance – that is to say essentially on geographical ideas – that one finds the contemporary definition of the continental shelf and the legal basis of title thereto. Article 76 of the Convention on the Law of the Sea gives expression to these new ideas.

127. One may thus readily identify the error of interpretation which Libya commits when, referring to Article 76, it says:

> "Not only does the physical fact of natural prolongation operate throughout the shelf area (unlike the 200 mile limit which is an arbitrary limit and which operates only as an outer limit)...".[2]

No doubt one may say that the concept of natural prolongation operates as well within, as outside, the 200 mile limit, but only on the understanding that it does so in two totally different senses: up to 200 nautical miles natural prolongation is defined exclusively by the distance from the coasts; and it is only beyond 200 miles that it is defined by reference to its physical characteristics. Indeed, subject to limited exceptions, even this outer limit is defined by distance, namely 350 nautical miles.

128. These new considerations are highlighted by the judgment in the *Tunisia–Libya* case in several places. The legal notion of the continental shelf, it states, has:

> "acquired a more extensive connotation, so as eventually to embrace any sea-bed area possessing a particular relationship with the coastline of a neighbouring State, whether or not such an area

---

[1] Decision of 30 June 1977, para. 191.

[2] Libyan Memorial, p. 83, para. 6.08.

presented the specific characteristics which a geographer would recognize as those of what he would classify as ‘continental shelf’”[1]

“… in certain circumstances (i.e. up to 200 miles) the distance from the baseline, measured on the surface of the sea, is the basis for the title of the coastal State… The legal basis of the title to continental shelf rights – the mere distance from the coast – …”.[2]

“… exclusive rights over submarine areas belong to the coastal State. The geographic correlation between coast and submerged areas off the coast is the basis of the coastal State’s legal title… (T)he coast of the territory of the State is the decisive factor for title to submarine areas adjacent to it”.[3]

“The coast… constitutes the starting line from which one has to set out in order to ascertain how far the submarine areas… extend in a seaward direction…”.[4]

“… The physical factor constituting the natural prolongation is not taken as a legal title…”.[5]

129. It is hardly necessary to recall that the two ways of identifying natural prolongation – by the physical elements and by the distance from the coast – are not the same. One can understand that, since Libya is anxious to relate its approach closely to physical prolongation, it has made no more than discrete allusions to distance and to coasts.[6] If, as the Libyan Memorial contends, it is the existence and extent of the physical and natural prolongation which determines the continental shelf rights of a State, neither the configuration of the coast nor the distance from it has any rôle to play. If, on the other hand, as is true of present day customary international law, the distance from the coast is the generative element of the continental shelf rights of a State, the physical characteristics of the sea-bed (its geological structure and geomorphological configuration) are irrelevant for the purposes of determining the extent of the rights of the coastal State unless its physical continental shelf extends beyond 200 nautical miles. The Libyan Memorial acknowledges that one of the trends during the Third Conference on the Law of the Sea was to approach the continental shelf “on the basis of a simple distance criterion of 200 miles *and thus disregard natural prolongation*”.[7] What the Libyan Memorial does not state is that it is precisely this trend which has come to be accepted by customary international law.

130. It is clear that in this conception of the continental shelf the extent of the rights of a coastal State is not affected by the presence of features such as trenches and channels. Judge Jiménez de Aréchaga put the point thus:

---

[1] *I.C.J. Reports 1982*, p. 45, para. 41.

[2] *Ibid.* p. 48, para. 48.

[3] *Ibid.* p. 61, para. 73.

[4] *Ibid.* p. 61, para. 74.

[5] *Ibid.* p. 58, para. 68.

[6] Libyan Memorial pp. 87–89, paras. 6.17–6.20; p. 104, para. 6.61.

[7] *Ibid.* p. 87, para. t.17.

> "This new method of defining the continental shelf by laying down an agreed distance from the baselines definitely severs any relationship it might have with geological or geomorphological facts. The continental shelf extends, regardless of the existence of troughs, depressions or other accidental features, and whatever its geological structures, to a distance of 200 miles from the baselines, unless the outer edge of the continental margin is to be found beyond that distance".[1]

131. A second consequence of this approach to the legal basis of title is that all coastal States have the same continental shelf rights. This equality of States underlies the evolution of customary international law in this matter – as has already been mentioned. To quote Judge Jiménez de Aréchaga once more, the natural prolongation – in the present spatial sense of that expression –

> "... exists in every case, whatever may be the characteristics of depth or geological composition of the sea-bed. To enjoy continental shelf rights all that a State needs is a coastal front to the sea ...".[2]

132. From what has been said above there can be no doubt that the theory of the Libyan Memorial according to which natural prolongation in its physical sense – geomorphological and geological – constitutes the legal basis of title to continental shelf rights does not accord with international law.[3]

(2) *Delimitation*

133. In these circumstances it is hardly surprising that the Libyan theory of delimitation based on the identification of the natural prolongations of Malta and Libya in the physical sense is also in conflict with international law.

134. On this point, as on the previous one, the evolution began very early. As the judgment in the *Tunisia–Libya* case noted, even in 1969 the Court "did not regard an equitable delimitation and a determination of the limits of 'natural prolongation' as synonymous" and only indicated that the delimitation must be "effected in such a way as to leave 'as much as possible' to each Party the shelf areas constituting its natural prolongation".[4] Even within this limit, the "physical and geographical facts were not placed by the Court among the legal rules which govern or determine delimitation ... but as factors which the Parties may take into account in negotiating their delimitation".[5] The refusal

---

[1] *I.C.J. Reports 1982*, Sep. Op. p. 114, para. 51.

[2] *Ibid.* p. 117, para. 159.

[3] In the *Tunisia–Libya* case, Libya expressed more precise opinions on the legal basis of title to continental shelf rights: "The criterion of depth or bathymetry has ceased to have any relevance to the definition of the shelf within 200 miles from the baseline" (Counter-Memorial, p. 140, para. 317).

[4] *I.C.J. Reports* 1982, p. 46, para. 44.

[5] *Ibid.* Sep. op. by Judge Jiménez de Aréchaga, p. 117, para. 60.

of the arbitral award of 1977 to attribute a delimitative effect to "so substantial a feature as the Hurd Deep"[1] is in the same line of thought.

135. But it is principally the *Tunisia–Libya* case which has permitted the Court to reject categorically the argument that the delimitation of areas of continental shelf appertaining to two States must be effected by reference to their natural prolongations in the physical sense of the term. The position taken by the Court in this case is even more remarkable since the two Parties had maintained that the delimitation should reflect their respective natural prolongations. The scientific determination of the natural prolongation appeared to the two Parties as an essential element of the delimitation.[2] The Court did not accept that the delimitation should be carried out according to physical criteria of a scientific character (whether there was a question of essential geological considerations, as Libya demanded, or a question of geomorphological ones, as Tunisia contended). The Court considered that in certain cases it was not "possible" to "identify", "define", or "determine" the limits of the physical and natural prolongations of the two Parties and that even if this were possible, "the idea of natural prolongation" would not be "sufficient, or even appropriate in itself to determine the precise extent of the rights of one State in relation to those of a neighbouring State".[3]

136. The Court certainly did not exclude completely the possibility that a very marked physical separation might serve as a basis for delimitation. Nor did it exclude the possibility that a physical separation which was not so marked might have a function "as one of the several circumstances considered to be the elements of an equitable delimitation".[4]

However the Court also said in the same case, that unless the physical feature "were such as to disrupt the essential unity of the continental shelf so as to justify a delimitation on the basis of its identification as the division between areas of natural prolongation, it would be an element inappropriate for inclusion among the factors to be balanced up with a view to an equitable delimitation".[5]

137. That two States may adopt physical features as the boundary of their continental shelves (as did Australia and Indonesia in relation to the Timor Trench) is one thing. That a judge or arbitrator should make these same features into a compulsory legal criterion is quite another.[6]

---

[1] *Ibid.* p. 57, para. 66.

[2] See the Judgment in that case, p. 43, para. 36 and p. 44, paras. 38–39.

[3] *Ibid.* p. 46, para. 43, at page 47, para. 44. The Court further stated that "It would be a mistake to suppose that it will in all cases, or even in the majority of them, be possible or appropriate to establish that the natural prolongation of one State extends, in relation to the natural prolongation of another State, just so far and no farther, so that the two prolongations meet along an easily defined line".

[4] *Ibid.* p. 58, paras. 67 and 68.

[5] *Ibid.* p. 64, para. 80.

[6] Judge Jiménez de Aréchaga was also categorical in his condemnation of the argument that a continental shelf should be delimited by reference to the natural prolongation of the two States in the physical sense of the term. In his Separate Opinion,

138. There is another reason which runs counter to the Libyan argument seeking to find a decisive factor for delimitation in the identification of natural prolongation in the physical sense. As the Court in the *Anglo–French Continental Shelf Arbitration* said in relation to the Hurd Deep, the location features of this kind is matter of chance – "a fact of nature" – and "there is no intrinsic reason why a boundary along this axis should be the boundary"[1]. What justification could there be for accepting this element of chance when the feature which one seeks to retain as a kind of natural boundary is situate very close to the coast of one of the Parties? In such a case the inherent right of the State concerned to the exploration and exploitation of the submarine resources of its natural prolongation (i.e. to a certain distance from its coast) would be denied. There would also be a risk of compromising its security interests thereby infringing one of the dominant principles in the theory of the continental shelf, namely, that third States must not be allowed to exploit the resources of the sea-bed and subsoil of the marine areas close to the coast. A separation of the physical prolongations situate near the coast of one of the States would produce at the same time an "encroachment" of one of the States upon the natural prolongation, spatially defined, of the other and the "cutting-off" of the latter from areas directly situate in front of its coast.

139. These basic interests of a State are not simply a relevant circumstance showing up the inequity of the result achieved and the need to change it. It is something more than that: it amounts to a restriction upon one of the constitutive elements of the concept of the continental shelf, namely, equality between coastal States, whether or not they possess a physical natural prolongation and regardless of the extent of the latter. Nearly all the sea-bed to one, virtually nothing to the other: that is precisely the kind of delimitation that the principles and rules of international law cannot justify. That is precisely the kind of situation which would arise in this case if the Libyan argument of the "Rift Zone" and of the "Sicily–Malta Escarpment" were to be accepted: Malta would see its continental shelf rights – rights inherent in it as a coastal State – reduced to almost nothing in relation to its southern and eastern coasts; while Libya would be enabled to explore and exploit the resources of the sea-bed as far, so one may say, as the very "windows" of Malta. Libya would have Malta wedged between narrow boundaries set by Libya's artificial conception of a limited prolongation towards the south and east. Malta would thus be virtually enclaved, while the maritime rights of Libya would spread broadly towards the north and skirt the Medina Escarpment towards the east.

140. The Libyan Memorial does not seek to conceal this fact.[2]

---

at page 117 para. 61, he states that "Physical features such as depressions, channels, sea-bed contours, geological structures, etc. cannot by themselves govern the determination of continental shelf boundaries".

[1] Decision of 30 June 1977, *International Reports*, Vol. 54, p. 6, para. 108.

[2] Libyan Memorial, pp. 132–133, paras. 8.15–8.16.

Figure 4[1] and Map 17[2], moreover, leave not the least doubt as to the practical consequences of the Libyan legal argument. Rarely would encroachment and cut off have been clearer. Rarely would a State have seen itself so substantially deprived of the largest part of its natural prolongation in the name and under the pretext of conformity with natural prolongation (physically defined). Recalling the agreement of 1965 by which the United Kingdom and Norway delimited their continental shelves in the North Sea on the basis of a median line and without taking account of the Norwegian Trough, situate near the Norwegian coast, the Libyan Memorial states:

> "Otherwise the United Kingdom would have acquired a grossly disproportionate share of the continental shelf of the North Sea between the two States if the boundary line had followed the Norwegian Trough which runs close to the Norwegian coast".[3]

Does not Libya realise that it thus destroys the argument which it develops against Malta in its Memorial?

141. Like land boundaries, maritime boundaries are not a product of nature but of man, a political fact. This is true not only in terms of customary international law but also in terms of State practice: "The concept of natural prolongation ... was and remains a concept to be examined within the context of customary law *and State practice*".[4] As already pointed out, the Libyan Memorial says little about such practice. At most it mentions the agreement of 1972 between Australia and Indonesia, which takes account of the Timor Trench for the delimitation of the continental shelf,[5] as well as the agreements between the United Kingdom and Norway of 1965,[6] Italy and Greece of 1977[7] and between Italy and Tunisia of 1971.[8] These references are quite insufficient to reflect the relevant practice; more so since the Libyan interpretation of these agreements is not even correct.

142. As in relation to customary law, it is convenient to distinguish between state practice relative to the legal basis of title and state practice bearing on delimitation.

143. As regards legal entitlement, it is sufficient to refer to such State measures as decrees and concessions which identify the outer limits of the shelf without regard to trenches, depressions, troughs, etc.[9]

144. As to the delimitation, the essential fact is that State practice

---

[1] *Ibid.* p. 132.

[2] *Ibid.* p. 160.

[3] *Ibid.* p. 101, para. 6.51.

[4] *Tunisia–Libya* case, *I.C.J. Reports* 1982, p. 46, para. 43.

[5] Libyan Memorial, p. 99, para. 6.48.

[6] *Ibid.* p. 101, para. 6.51.

[7] *Ibid.* p. 149, paras. 9.46–9.48.

[8] *Ibid.* p. 150, paras. 9.50–9.52.

[9] As was stated by Judge Jiménez de Aréchaga, in his Sep. Op. in the *Tunisia–Libya* case (p. 118, para. 64), "This is the case, for instance, of the Soviet Union, Norway off its northern coast, Brazil, Venezuela, Canada and the United States off the coasts of California".

does not take account, with but one exception,[1] of trenches, troughs, channels, depressions and other features even if they are of a kind which could mark the limits of the physical natural prolongations of the States concerned. This feature was noted in the award in the *Anglo–French Continental Shelf* case:

> "... to attach critical significance to a physical feature like the Hurd Deep–Hurd Deep Fault Zone in delimiting the continental shelf boundary in the present case would run counter to the whole tendency of State practice on the continental shelf in recent years".[2]

Commenting on this passage the Libyan Memorial states:

> "The reference to the 'whole tendency of State practice' was not further amplified, and *it is not entirely clear what practice the Court of Arbitration has in mind*. There is, however, clear evidence that the Parties to the Australia/Indonesia Agreement of 9 October 1972 took account of the Timor Trench in determining the boundary between their respective shelves".[3]

145. Libya apparently had some difficulty in finding delimitation agreements which disregarded trenches or depressions. Instead, the Memorial has found precedent in the reverse sense, namely, that of the unique agreement between Australia and Indonesia which takes into consideration the Timor Trench and it is this agreement which Libya represents as reflecting State practice. If however Libya in this case had thought to look back its own Counter–Memorial in the *Tunisia–Libya* case it would have found some interesting information on this matter. There it would have seen the settlement described not as reflecting State practice but rather as an exception to this practice, as an example which: "discloses how significant the 'discontinuity' must be" before States agree to pay heed to it in the delimitation of their continental shelves.[4] The Timor Trough is effectively "huge": according to the source just mentioned, "it is more than 550 nautical miles long and on the average 40 miles wide, and the sea-bed slopes down on opposite sides to a depth over 10,000 feet".[5] In any case, as Judge Jiménez de Aréchaga has observed, the fact that in one case or another States may decide to fix the boundaries of their continental shelves at a trench or

---

[1] See below in this paragraph.

[2] Decision of *30 June 1977*, *International Law Reports*, Vol. 54 p. 6 para. 10. See also Reduced Map No. 1 on following page.

[3] Libyan Memorial, p. 99 para. 6.48.

The map opposite, Reduced Map No. 1, is clear and substantial evidence of State practice ignoring physical features. It is a map of the North Sea showing the main physical features of the area and the actual lines of delimitation between the countries concerned. It also shows, contrary to Libya's assertion, that the United Kingdom did in fact acquire about half the area whilst Norway, Denmark and the Netherlands (and of course Germany) had to share the other half between them.

[4] *Ibid.* p. 133, para. 297.

[5] For more details see Libyan Counter–Memorial in *Tunisia–Libya* case, p. 133 and note 4 and Libyan Memorial in the present case, p. 100 note 1.

depression may not be interpreted as being significant unless there was a legal obligation for them to proceed in this way.[1] The agreement between Australia and Indonesia is in fact an isolated case confronting a substantial practice to the contrary.

146. From this practice the authors of the Libyan Memorial in the present case would have found some equally significant examples in the Libyan Counter-Memorial filed in the *Tunisia–Libya* case. Libya then wrote:

> "Delimitation agreements between States commonly cover areas of shelf up to depths of 4,000 metres",[2]

And this proposition was accompanied by a footnote providing a long list of examples. Among these examples a number relate directly to troughs or trenches of considerable depth.[3]

147. To these examples one must add three agreements which are referred to in the Libyan Memorial but which are there incorrectly interpreted.

148. Reference has already been made to the agreement between the United Kingdom and Norway which establishes the continental shelf boundary between the two countries along the median line and takes no account of the Norwegian Trough. This Trough is 300 nautical miles long, has a depth of between 530 and 742 metres and is 20 to 80 nautical miles wide.[4] As it is separated from the Norwegian coast by an area or strip of shelf which is only 2 to 10 miles wide and which is less than 200 metres deep, this Trough should have, in the logic of the Libyan argument, marked the separation of the natural prolongation (and thus, of continental shelf rights) of Norway and the United Kingdom. The Court said unambiguously in 1969 that "the shelf areas in the North Sea separated from the Norwegian coast by the 80–100 kilometres of the Trough cannot in any physical sense be said to be adjacent to it, nor to be its natural prolongation". But this did not prevent the Parties, said the Court, from deciding that the areas situate west of the Trough, although not forming part of the natural physical prolongation of Norway, should be part of its continental shelf as far as the median line.[5]

149. Passing next to the two other agreements which are mentioned in the Libyan Memorial, the same observations may be made. The agreement between Italy and Tunisia of 20 August 1971 is presented by Libya as "related to a major geomorphological feature: the Rift Zone" as well as to the Pantelleria and Linosa Troughs.[6] It appears clearly from Map 15 of the Libyan Memorial[7] that the boundary established

---

[1] *Tunisia–Libya* case, Sep. Op. p. 117, paras. 60–61.

[2] *Tunisia–Libya* case, Libyan Counter-Memorial, p. 138, para. 312.

[3] See also Rhee in 21 *Harvard International Law Journal* 667 at p. 678, note 48.

[4] The discontinuity is such that wells on the Norwegian shelf seawards of the trough are connected by pipeline to the United Kingdom rather than to Norway. See also Reduced Map No. 1.

[5] *North Sea* Cases, *I.C.J. Reports* 1969, p. 32, para. 45.

[6] Libyan Memorial, p. 150, para. 9.51.

[7] At page 150.

by this agreement has absolutely nothing to do with the "Rift Zone" or with the Pantelleria and Linosa Troughs, of which it does not follow the so-often-mentioned northwest–southeast axis. Article I of the Agreement refers to a median line and Article II defines the boundary around the islands of Pantelleria, Lampione, Lampedusa and Linosa by simple distances (of 12 or 13 miles as the case may be) measured from various coastal points. Far from supporting the Libyan argument this Agreement is a perfect example of delimitation based on distance from coasts.

150. The Agreement between Italy and Greece of 24 May 1977 is also presented by the Libyan Memorial as having a relationship with geological and geomorphological facts in the sense that the most southerly point of this delimitation lies in the Ionian Abyssal Plain, "the major geomorphological and geological feature in the Ionian Sea".[1] Libya apparently hesitates to go so far as to invoke this Agreement in support of its thesis of natural prolongation in the physical sense. This hesitation is understandable since it is sufficient to ⑪ look at Map 15 of the Libyan Memorial or the ICBM to see that the physical natural prolongation of Sicily toward the east is of small extent and that if one applies to Sicily the Libyan argument, according to which the natural prolongation of Malta stops at the Sicily–Malta Escarpment, Italy's rights to the continental shelf east of Sicily would also end at this same Escarpment. It was not this solution, but the opposite one, which was adopted by the Parties to the Agreement of 1977: the boundary line was established, according to the Preamble of the Agreement, "on the basis of the principle of the median line", or, in other words, on a "spatial" or "area" basis and without in the least taking into account the physical elements of the sea-bed – geology, bathymetry or geomorphology.

151. One may conclude therefore that the Libyan view of natural prolongation as the legal basis of title, or as a factor in the process of delimitation, is not in accord with international law. Malta now wishes briefly to present its own conception of the first phase in the delimitation process.

2. The Rules of International Law Governing the Delimitation Process: Malta's Views

152. Malta will restate its case in Part IV of this Counter-Memorial. Here it will do no more than indicate its views regarding the manner in which, in a case such as this, the delimitation process should unfold.

---

[1] *Ibid.* p. 149, para. 9.47. The Court will no doubt recall the critical attitude adopted by Libya in the *Tunisia-Libya* case in relation to what Libya then named the "so-called 'Ionian Abyssal Plain'" (*I.C.J. Pleadings*, Vol. II, Counter-Memorial, p. 106, para. 234; Vol. IV, Reply, pp. 42-43, para. 90; examination of Professor Fabricius by Professor Bowett, Vol. V, p. 196).

(1) *The Starting Point: an Equidistance Line*

153. For reasons which have already been given, the starting point of the delimitation process is to be found only by consideration of the concept of continental shelf, that is to say, in the legal basis of title to continental shelf rights. On this point the two Parties are in agreement. Where they diverge is on the content of this legal basis of title. Libya places this basis in natural prolongation in its physical sense. Malta hopes that it has established that this approach is not in accordance with international law. Each coastal State is entitled to continental shelf rights to a certain distance from its coast, whatever may be the physical characteristics of the sea-bed and subsoil, and it is only beyond 200 miles from the coast that natural prolongation in its physical aspect resumes a rôle. To take due account of this evolution one might even say that the concept of natural prolongation has lost its importance. Such proposition is however correct only if one states that it relates to the physical conception of natural prolongation.[1] Detached from its purely physical aspects, the concept of natural prolongation remains however entirely valid. The continental shelf of a State is today, as it has always been, the natural prolongation of its land territory; but the natural prolongation is no longer (if it ever was) the physical source of the rights of the State over certain parts of the sea-bed; it is the result of a legal operation which acknowledges that each coastal State, independently of the physical characteristics of the sea-bed adjacent to its coast, has an inherent exclusive right, *ipso jure* and *ab initio*, to the exploration and exploitation of the natural resources of its sea-bed up to a certain distance from its coasts.

154. This right includes a positive aspect. The possibility is open to each coastal State to explore and exploit the natural resources lying at a certain distance from its coasts. It also includes a negative aspect, which was important, as has been seen, in the evolution of the law on this subject. This is the faculty possessed by each coastal State to prevent third States, which happen to be richer or more powerful, from exploring or exploiting the natural resources close to its coast. In this way all coastal States are safeguarded from encroachment by third States. In this way, also, the equality of all coastal States is assured in relation to the exploration and exploitation of the sea-bed lying off their coastal fronts.

155. The point of departure in the delimitation process must of necessity reflect these elements in the international law of the sea. When it is a matter of establishing the limits of the continental shelf zones between two neighbouring States, the basic concept of distance between the coasts forms the necessary point of departure of the whole process:

> "It is only the legal basis of the title to continental shelf rights – the mere distance from the coast – which can be taken into

---

[1] cf. Judge Oda; Diss. Op. in *Tunisia–Libya* case, *I.C.J. Reports* 1982, p. 222, para. 207: "... the fading away of the geomorphological notion of natural prolongation.".

account as possibly having consequences for the claims of the Parties".[1]

156. In the *Tunisia–Libya* case the Court considered that since the two Parties had invoked the principle of natural prolongation in its physical sense, it was not for the Court to treat the "distance principle" as a "criterion for delimitation".[2] In order to avoid any such misunderstanding in the present case Malta expressly requests the Court to recognize this principle as the controlling element in the delimitation in the present case.

157. Given that there does not exist between the coasts of Malta and Libya a sufficient space for each of the two States to benefit from continental shelf rights up to the full distance of 200 miles recognized by international law, the delimitation process must in the submission of Malta, necessarily begin by taking into consideration an equidistance line between the two coasts. This is because equidistance is the most appropriate technique to give effect at the same time to the two components of the concept of natural prolongation: distance and coasts.

158. That equidistance gives full weight to the fact of distance is too evident a proposition to require any demonstration. By very definition it consists in tracing a line each point of which is equidistant from the nearest point on the baselines of each of the Parties.

159. It is also clear that equidistance gives full weight to the second component in the concept of continental shelf and of the legal basis of title to continental shelf rights, namely, the coasts. This link between delimitation and the coasts was underlined by the Court as early as 1969 in relation to the idea of natural prolongation as it was understood in the state of customary international law of that date: "it is ... necessary to examine closely the geographical configuration of the coastlines".[3] The same link was recalled, always in relation to the idea of natural prolongation, in the decision in the *Anglo–French Continental Shelf Arbitration* of 1977.[4] It was confirmed with particular force in the judgment of the Court in the *Tunisia–Libya* case in 1982, once more in relation to the idea of natural prolongation: "The coast of each of the Parties ... constitutes the starting point from which one has to set out in order to ascertain how far the submarine areas appertaining to each of them extend ... in relation to neighbouring States ...".[5]

160. In this connection it is necessary to emphasise that both those who oppose and those who support equidistance are in agreement that equidistance achieves a reflection of the coastline in the process of delimitation (while natural prolongation in its physical sense is independent of the coastline and does not take into account this essential

---

[1] *Tunisia–Libya* case, *I.C.J. Reports* 1969, p. 48, para. 48.

[2] *Ibid.*

[3] *North Sea* cases, *I.C.J. Reports* 1969, p. 51, para. 96.

[4] Decision of 30 June 1977, paras, 100 and 248.

[5] *I.C.J. Reports* 1982, p. 61, para. 64.

feature of the legal basis of title to continental shelf rights). The Court has itself noted that with equidistance "the delimitation line is directly governed by points on the coasts concerned",[1] and it has declared that:

> "... it should be recognized that it is the virtue – although it may also be the weakness – of the equidistance method to take full account of almost all variations in the relevant coastlines".[2]

161. Libya's contention that "The attempt to use equidistance is precisely an attempt to equate the two coasts"[3] is unjustified since the line of equidistance reflects precisely the respective configurations of the two coasts *including their differences*. As for the "weakness" mentioned by the Court, namely, that of being too faithful a reflection of almost all variations in the coastlines, it is easy to remedy that, as Judge Oda has pointed out, by an appropriate selection of basepoints and baselines.[4] Besides, an equidistance line does not reflect every irregularity of the coast in its smallest detail since, by definition, it is constructed on the basis of the nearest point, that is to say, on the basis only of a certain number of "control points". As Judge Oda pointed out: "only salient points or convexities on the coastline can affect the drawing of this line".[5]

162. It should here be observed that the taking into consideration of the coasts of the Parties as a geographical element is not to be done in the abstract. In applying the concept of distance from coasts within the framework of the process of delimitation, what really matters is the concrete relationship of the relevant coasts. Hence the interest which international law has never ceased to have in the distinction between "opposite" and "adjacent" coasts.[6] Equidistance as the primary element in the delimitation has even greater relevance, if such is possible, in the case of a relationship between "opposite" coasts than in that of a relationship between "adjacent" coasts. But it is at the stage of control, by reference to the equitable character of the result, that this distinction produces its principal effects. To this further reference will presently be made.

163. Before proceeding further, and in order to avoid all misunderstanding, Malta considers it necessary to state that in adopting this equidistance line as the starting point of the delimitation process, it does not intend in any way to suggest that the equidistance line must necessarily be – in some inherent way – the appropriate boundary in every case, or even in the present case. Malta is perfectly aware of the criticisms which have been levelled at equidistance seen as a legal rule

---

[1] *Ibid.* p. 62, para. 76.

[2] *Ibid.* p. 88, para. 126.

[3] Libyan Memorial, p. 155 para. 10.04.

[4] *Tunisia–Libya* case, *I.C.J. Reports* 1982. Diss. Op., p. 262, para. 168.

[5] *Ibid.* p. 272, para. 185. See also below para. 275 and Reduced Maps Nos. 12 to 15.

[6] The decision in the *Anglo–French Continental Shelf Arbitration*, which attached considerable importance to the "actual geographical relation to each other and to the continental shelf", states that "the relationship of 'opposite' or 'adjacent' States is nothing but a reflection of the geographical facts" (paras. 94–95).

to be compulsorily applied in every case. It appreciates that in certain cases equidistance can lead to an inequitable or unreasonable result. Malta in no way intends to place in question the primordial importance of equity as a legal principle nor the "toning down of equidistance".[1] Malta advocates the use of the equidistance line – in this case as in every other – only as a kind of primary delimitation dictated by the geographical facts. These are: the coasts of the Parties and their opposite relationship, on the one hand; the distance from these coasts, on the other. It is in relation to this primary delimitation that the question of whether the result achieved is equitable and reasonable can then be asked. If, on the basis of this "control", one can be assured of the equitable and reasonable character of the solution then it may be maintained as the boundary; if not, the equidistance line must be adjusted or combined with some other method of delimitation.

164. Thus, for the moment, it is simply as a primary delimitation that equidistance is seen as starting the delimitation process. To object to such an approach it would be necessary to concede that the "toning down" of which one has been aware for the last 15 years was inspired by the conviction that equidistance is always and in every case necessarily inequitable. Malta is not aware that any such proposition has ever been asserted. The contraposition between "equidistance" and "equitable principles" has never meant that equidistance would not be equitable in *any* case or that to advocate equidistance would amount to arguing in favour of inequity. What this contraposition signifies is that equidistance cannot *always* be regarded as equitable and that equity *sometimes* requires another solution. Even those judges and arbitrators who have been most reticent regarding equidistance as a principle have not hesitated to recognize the possibility that as a method it could lead to an equitable solution if the particular situation so permits. If judicial and arbitral decisions have denied to equidistance the character of a necessarily equitable method, they have not at any time asserted that it is a necessarily inequitable method. On the contrary, the 1969 Judgment of the Court states that equidistance is a method "the use of which is indicated in a considerable number of cases".[2] The award in the *Anglo-French Continental Shelf* case of 1977, while eschewing equidistance as a solution which is always equitable and thus legally compulsory, nonetheless expressely applies equidistance as the primary method of delimitation both within the Channel and in the Atlantic Region.[3] The Court of Arbitration approves the fact that the Parties have retained the equidistance solution for the greater part of the delimitation.[4] The Court's Judgement of 1982, however little favourable to equidistance it seems, was far from excluding *a priori* the use of the concept and

---

[1] See sep. op. Judge Jiménez de Aréchaga in *Tunisia–Libya* case, *I.C.J. Reports* 1982, p. 109, para. 36.

[2] *I.C.J. Reports* 1969, p. 23, para. 22.

[3] Decision of 30 June 1977, paras. 84–86, 95, 103, 109, 182 and 239.

[4] *Ibid.* paras. 15, 22, 87, 103, 111, 120 and 146.

expressly mentioned that it might in certain cases lead to an equitable solution.[1]

165. One may thus conclude that the criticisms which have been levelled against equidistance seek only to exclude the suggestion that as a method it is always equitable and thus universally applicable; they do not seek to deny that equidistance is in certain cases equitable and thus applicable. Nor can one oppose the use of equidistance at the beginning of the delimitation on the ground that "any specific reference to equidistance" was eliminated from the final version of article 83 of the Convention of the Law of the Sea.[2] It should be recalled that this compromise text[3] adopted on the eve of the closure of the Conference, deleted simultaneously the *two* expressions around which controversy had centred within the Conference for nearly 10 years namely those of "equitable principles" and "equidistance". As the Court says in the *Tunisia–Libya* case, "in the new text, any indication of a specific criterion ... has been excluded. Emphasis is placed on the equitable solution which has to be achieved".[4] Neither the jurisprudence nor the work of the Third Conference on the Law of the Sea permits one to believe that a radical objection of principle could be raised to the use of equidistance.

166. No doubt this analysis will be confronted by the criticisms made of equidistance on the grounds of the unreasonable or inequitable result to which it occasionally leads. However this objection is irrelevant for two reasons: first, because a primary delimitation based on the geographical relationship is in itself *prima facie* equitable; secondly, because this primary delimitation must be subjected to such adjustment as may prove to be necessary in the light of all relevant circumstances. The equitableness and reasonableness of a result cannot be assessed *in abstracto*, but only by reference to a given line. It is only by reference to equidistance as a starting point that this assessment can and must be made.

167. Under these circumstances one can understand why even those earlier cases which decided to "abate" the operation of equidistance in the particular case, in order to control the result, did not decline to treat equidistance as the point of departure.

168. In its 1969 Judgment the Court said:

> "... the Court must examine the question of how the continental shelf can be delimited when it is in fact the case that the equidistance principle does not provide an equitable solution".[5]

How could the Court know that equidistance does not provide an equitable solution in a specific case without having first taken it into consideration?

---

[1] *I.C.J. Reports 1982*, p. 79, para. 109; p. 88, para. 126. Judge Jiménez de Aréchaga, while showing some reserve towards equidistance, in no way asserts that it could never lead to an equitable result (cf. Sep. Op. p. 107, para. 31 and p. 109, para. 35).

[2] Libyan Memorial, p. 97, para. 6.42 and p. 124, para. 7.10.

[3] See observations of Judge Oda, Diss. Op. *Tunisia/Libya I.C.J. Reports 1982* p. 246, para. 143.

[4] *I.C.J. Reports 1982*, p. 49, para. 50.

[5] *I.C.J. Reports 1969*, p. 50, para. 92.

169. The decision in the *Anglo–French Continental Shelf* case of 1977 raises "... the question whether the effect of individual geographical features is to render an equidistance delimitation 'unjustified' or 'inequitable'" and speaks of "the effect of individual geographical features on the course of an equidistance line".[1] With reference to the Scilly Isles, the decision says that "the essential point... is to determine whether, in the actual circumstances of the Atlantic region, the prolongation of the Scilly Isles...[2] renders 'unjust' or 'inequitable' an equidistance boundary...". It would hardly be possible to identify more clearly a delimitation process which began with the use of equidistance and then went on to test the equitableness and reasonableness of the result by reference to the circumstances relevant to the case.

170. The 1982 Judgment of the Court at first sight seems to take a different position since it states that "equidistance is not, in the view of the Court,... a method having some privileged status in relation to other methods" and since it declined to begin by examining the establishment of an equidistance line.[3] But a more careful reading of the Judgment shows that the Court's position was stated specifically in relation to the particular case: "Nor does the Court consider that it is *in the present case* required, as a first step, to examine the effects of a delimitation by application of the equidistance method, and to reject that method in favour of some other only if it considers the results of an equidistance line to be inequitable".[4] The Court's view may be explained by two considerations specific to that case which were mentioned by the Court in the same passage. One is that the two Parties themselves excluded an equidistance solution and, as the Court itself says, "the Court must take this firmly expressed view of the Parties into account". The second consideration is that this was not in any way a case involving opposite coasts – as is shown by the reference to the *North Sea* case, "which also concerned adjacent States".[5] Again – and better – at the end of paragraph 109 the Court spells out in words that it had arrived at the conclusion that:

> "... equidistance may be applied if it leads to an equitable solution; if not, other methods should be employed".

How could the Court tell whether equidistance does, or does not, lead to an equitable solution if equidistance had not first been considered in the delimitation process? And in effect the Court clearly took equidistance as a starting point of its delimitation of the second sector of the demarcation line.[6]

---

[1] Decision of 30 June 1977, *International Law Reports*, Vol. 54, p. 6, para. 240.

[2] *Ibid*. para. 243.

[3] *I.C.J. Reports* 1982, p. 79, para. 110.

[4] *Ibid*. emphasis supplied.

[5] *Ibid*. p. 79, para. 109.

[6] *I.C.J. Reports* 1982, p. 88, para. 126.

171. The separate and dissenting opinions in the 1982 case do not detract from this analysis. Judge Jiménez de Aréchaga, though denying equidistance the character of "a privileged method or one having pride of place",[1] and excluding any "presumptions in favour of equidistance"[2] nonetheless says:

> "Naturally, in all cases the decision-maker looks at the line of equidistance even if none of the Parties has invoked it".[3]

It may be noted also that Judge Jiménez de Aréchaga emphasises even more than the Court the objection which the two Parties had raised to the use of equidistance in the case. In his view, the Court was not entitled to contemplate of its own initiative any solution upon which neither of the Parties had presented detailed arguments; consequently to use equidistance in such a case would have led to what he described as a "procedural inequity". Other members of the Court go even further and expressly stated that it was necessary – even in this case – to begin by using equidistance and then verify whether the result thus obtained was reasonable. Judge Gros says:

> "The Court's first task was thus to see what an equidistance line would produce in order to identify the 'extraordinary, unnatural or unreasonable', result to which, it is said, this method might lead",[4]

and he considers that it is proper in all cases to "cross-check the equity of the result" – "*proceder au controle de l'equitable*".[5] Likewise, Judge Oda considers that the equidistance method "should be tried before all others",[6] as does Judge Evensen.[7]

(2) *Checking the equitable and reasonable character of the result: relevant circumstances*

172. At the first stage, as has just been described, equidistance must be seen as a formula founded on the legal basis of title to the continental shelf. It follows that the definitive solution to the question of delimitation cannot be reached at this stage since the fundamental rule of international law is that the delimitation must be equitable and reasonable. As the Court has said: "equidistance must be applied if it leads to an equitable solution; if not, other methods should be employed".[8] To pass from the first stage to the delimitation properly so-

---

[1] *Ibid.* Diss. Op. p. 109, para. 35.

[2] *Ibid.* Diss. Op. p. 105, para. 18.

[3] *Ibid.* Diss. Op. p. 134.

[4] *Ibid.* Diss. Op. p. 149, para 12. The adjectives quoted are from the 1969 Judgment.

[5] *Ibid.* Diss. Op. p. 151, para. 15.

[6] *I.C.J. Reports* Diss. Op. p. 270, para. 181.

[7] *Ibid.* Diss. Op. p. 297, para. 15.

cf. A recent study by P. J. Allott, Power Sharing in the Law of the Sea, *American Journal of International Law* Vol. 77 (1983), p. 1; stresses "... the prominence that Geneva, State practice and the International Court had given to the method (of equidistance) as the *natural point* of departure for sea boundary delimitations" (p. 22. Emphasis supplied).

[8] *Tunisia–Libya* case, *I.C.J. Reports* 1982, p. 79, para. 109.

50

called it is necessary to check, with the aid of equitable principles, whether an equitable result has been obtained. This is why, as has already been stated, it is necessary to weigh all the relevant circumstances and to balance up the equities, in order to reach an equitable result. It is at this stage that other geographical and additional circumstances of the situation intervene. These various circumstances will be examined in the next Chapter.

173. The fact that the application of equitable principles is effected by taking into consideration relevant circumstances highlights a particularly important aspect of the process of delimitation. This is that the equities of the situation must be assessed by reference to objective facts. As early as 1969 the Court emphasized that "there is no question ... of any decision *ex aequo et bono*" and that it is necessary that "the decision finds its objective justification in considerations lying not outside but within the rules".[1] In 1982 the Court strongly affirmed this distinction and stated that the assessment of relevant circumstances "is very far from being an exercise of discretion or conciliation; nor is it an operation of distributive justice".[2] The judge or arbitrator does not develop a personal and subjective conception of what amounts to a just delimitation, but only a view based on the objective facts of the situation.

174. State practice shows in an incontrovertible manner that in a large number – indeed, the largest number – of cases equidistance commended itself to the Parties as the appropriate solution. This is true especially, as has already been shown in the Maltese Memorial, in the situations of Island States opposite mainlands concluding boundary agreements. In opposite coasts situations, judges and arbitrators have recognized that equidistance is normally the appropriate solution. This is acknowledged by the Court in the 1969 Judgment because, says the Court, "such a line must effect an equal division of the particular area involved".[3] It is also recognized by the 1977 Arbitral Decision, which expressly commends the two Parties for having considered that "in principle, the method applicable in the English Channel is to draw a median line equidistant from their respective coasts".[4] As the Court of Arbitration says later, "in a situation where the coasts of the two States are opposite each other, the median line will normally effect a broadly equal and equitable delimitation".[5] And this is confirmed by the Court in its 1982 Judgment which acknowledges that the situations of opposite coasts lend themselves more easily to a delimitation on the basis of equidistance than did those of adjacent coasts.[6] The importance of these precedents for the present case cannot be overstressed. What may

---

[1] *I.C.J. Reports* 1969, p. 48, para. 88 (Emphasis supplied).

[2] *I.C.J. Reports* 1982, p. 60, para. 71.

[3] *I.C.J. Reports* 1969, p. 36, para. 57.

[4] Decision of 30 June 1977, *International Law Reports*, Vol. 54, p. 6, para. 87.

[5] *Ibid*, para. 239; cf. paras. 95, 103 and 182.

[6] *I.C.J. Reports* 1982, p. 88, para. 126.

be necessary to add is that even when examination of relevant circumstances leads to some modification of the equidistance formula. This is normally done by means of an adjustment of this method rather than by its abandonment.

175. As regards the practice of States, the decision in the *Anglo-French Continental Shelf Arbitration* of 1977 deals with this matter at two points.[1] The well known work (twice cited in the Libyan Memorial) of Professor Conforti and Professor Francalanci,[2] summarises the practice as follows:

> "... the instances are very rare of agreements in which the equidistance criterion turns out to be radically departed from, unless 'special circumstances' of a geographical nature require it".

3. CONCLUSIONS

176. In Malta's submission the previous paragraphs state the principles and rules of international law which govern the delimitation process. As has been said, the process of delimitation does not involve two successive stages any more than the application of equity, in other spheres of international law, involves the *successive* application of a general rule *followed* by the application of a particular rule which derogates from it. Equity consists not in that, but in a reasonable application, taking into consideration all the circumstances of the case, of the general rule.[3] The delimitation process as thus conceived assures the satisfaction of the double requirement of every rule of law: on the one hand, the reflection of a sufficient degree of generality to avoid the subjective quality of decisions *ex aequo et bono* and, on the other, the acceptance of a sufficient degree of adaptation to the circumstances of each case to achieve a conclusion which is "reasonable" and "equitable". The procedure which customary international law has developed ensures a proper balance between these two requirements: enough flexibility, but not too much. As Malta understands it, this procedure offers the advantage both of being based on the fundamental concept of the continental shelf and of having its roots in the legal basis of title, while at the same time taking into account the fact that, although they are intimately linked, entitlement and delimitation are nonetheless distinct ideas. Malta submits that it is in these considerations – which brings together the experience both of State practice and of international jurisprudence – that the Court may find the equitable and reasonable solution to the issues submitted to it.

---

[1] Decision of 30 June 1977, paras. 85 and 249.

[2] *Atlante dei confini Sottomarini* (Milan, 1979).

[3] *Cf. Barcelona Traction, I.C.J. Reports* 1970, Sep. Op. by Sir Gerald Fitzmaurice, pp. 85–86, para. 36.

CHAPTER III

"OTHER RELEVANT FACTORS"

177. Malta now turns to consider the remaining relevant factors to which reference has been made in the Libyan Memorial.

178. Libya has referred in its "Statement of Principles and Rules of International Law Applicable to the Present Case" to five "Other Relevant Factors": (a) Conduct of the Parties; (b) Delimitations with Third States; (c) Security interests; (d) Islands; and (e) Economic and related factors.[1] This reference was made on a relatively abstract, almost academic, level; and it was only pursued in a more specific way in Part III, on "The Application of the Law to the Facts and Relevant Circumstances of the Case" in relation to (a) the Conduct of the Parties and (b) Delimitations with Third States.

179. Malta will now examine these various factors, by reference both to the Libyan and the Maltese positions.

1. CONDUCT OF THE PARTIES

180. Libya concedes in general terms that the conduct of the Parties is, in principle, a relevant circumstance.[2] But the Libyan Memorial's first treatment of the subject then goes on to identify a number of circumstances which may affect the value of three specific forms of conduct: positions adopted in negotiations, grants of concessions and legislation.[3] There seems little point in commenting upon these abstract considerations in comparably abstract terms. That there may be circumstances in which State conduct is not material to the question of continental shelf boundary delimitation goes without saying. The real questions are (i) whether, in relation to the aspects of State conduct invoked by Malta and with which some parts of the Libyan Memorial coincide, there is anything in the Libyan case to diminish the value of the factor as relied upon by Malta; and, (ii) conversely, whether Libya introduces any element of conduct in its own favour which calls for comment from Malta.

181. It is convenient to deal with these matters by responding directly to the five "conclusions" which Libya seeks to draw from its "brief résumé" of the conduct of the Parties.[4]

---

[1] Libyan Memorial, Chapter 6, pp. 107–114.

[2] Libyan Memorial, p. 107, para. 6.70.

[3] *Ibid.* pp. 107–109, paras. 6.70–6.73.

[4] *Ibid.* p. 147, para. 9.43.

182. The *First Libyan Conclusion* is that:

> "No specific line of delimitation or *de facto* arrangement appears from the conduct of the Parties since the emergence of the dispute."[1]

Malta has not asserted that any specific line or *de facto* arrangement *appears* from the conduct of the Parties. *What Malta has said* is:

(a) that Malta's conduct from the start (that is, in 1965) has involved the assertion of a median line as the correct boundary line and has always been consistent with that;

(b) Libya took no position in opposition to that of Malta until, at the earliest, 1973. In that year, eight years after Malta's first formal assertion of the median line, Libya put forward its own proposal for a line, quite close to Malta, calculated by reference to the ratio of the respective coastlines of the two countries. This line was in no way constructed by reference to Libya's now dominant concern to reflect its own "natural prolongation".

183. The public assertion by Malta of an equidistance line by the enactment on 28 July 1966 of Malta's Continental Shelf Act[2] was in fact preceded by a specific communication from Malta to Libya making the same assertion. This is the Maltese Note Verable to Libya of 5 May 1965[3] in which Malta advised Libya that it had assumed from the United Kingdom treaty rights and obligations made applicable to Malta prior to its independence, that Malta intended to accede to the 1958 Convention on the Continental Shelf, and that "in determining the boundary of the continental shelf appertaining to Malta, the Government was guided by the provisions relating to an equidistance line contained in Article 6(1) of the Convention." The Note Verbale concluded with the following words: "the Government of Malta will be grateful to know that the Government of Libya is in full accord with this determination". Libya refers to this Note in paragraph 4.27, p. 54, of its Memorial, without any suggestion that Libya reacted to the Note in any way. And it is a fact that Libya did not. Thus the period of public assertion of Malta's median line position referred to in Malta's Memorial as beginning on 28 July 1966, in fact, vis-à-vis Libya began at least a full year earlier, in May 1965; and the period of Libyan inactivity in relation to this issue is consequently eight years.

184. It is, of course, necessary to consider these two events of 1965 and 1966 in the light of the Court's own treatment, in the *Tunisia–Libya* case, of the effect upon Tunisia of Libya's Petroleum Law and Petroleum Regulations No. 1 of 1955. There the Court held that the line referred to in the Libyan legislation of 1955 was not opposable to Tunisia and could not be taken into consideration for the purposes of the judgment.[4] But the situation in that case is clearly distinguishable

---

[1] Libyan Memorial, p. 147, para. 9.43.

[2] Malta's Memorial, p. 16, para. 34.

[3] Libyan Memorial, Annex 34.

[4] *I.C.J. Reports* 1982, p. 69, para. 92.

from the one in the present case. There the Court found three features or considerations which served to deny effect to the Libyan measure. Each of them will now be mentioned, together with an indication of why that feature is not operative in the present case.

185. The first consideration was that the Libyan legislation could hardly be considered as a unilateral claim for maritime lateral boundaries with Tunisia. Malta's comment is that in view of the express terms of the 1965 Note Verbale, coupled with the 1966 Continental Shelf Act, it is quite clear that in 1965/1966 Malta did assert as against Libya a claim to an equidistance boundary.

186. The second consideration was that there was no evidence that Libya was claiming jurisdiction and control over a contiguous zone of about 50 miles beyond the territorial sea of Libya. Malta's submission is that in the present case the nature and extent of the Maltese claim was quite clearly expressed. And the fact that the Government of Malta adopted the courtesy of saying in the Note Verbale that it would "be grateful to know that the Government of Libya is in full accord with this determination" does not detract from the legal quality of the "determination" or make its efficacy conditional upon receiving express Libyan consent. Libya's silence over the ensuing period of eight years, in the light of which Malta eventually felt free to make the 1973 concession offers and grants, is sufficient to amount to the necessary consent, if consent be found to be required.

187. Thirdly, the Court considered the facts of the case as not allowing any assumption of acquiescence by Tunisia, whose manifested attitude excluded the possibility of speaking of such acquiescence. In the present case, on the other hand, as already indicated, the only attitude of Libya manifested in the situation was one of silence for eight years.

188. It is, indeed, pertinent to recall some of the observations made by Libya on the nature and importance, in its relations with Tunisia, of Libya's own conduct and of Tunisia's silence in relation thereto:

> "... such a method (Libya's proposed practical method) would conform to the first concrete and uncontested indication of sovereignty by one of the Parties, i.e. the limits of the Libyan Petroleum Zone No 1 of 1955"[1]
>
> "It is not conceivable that this legislation was unknown to Tunisia ... Yet Tunisia has made no protest or reservation at any time regarding either the Law or the Regulations"[2]
>
> "... it is quite clear that Tunisia from 1968 was well aware that a concession following the direction of this line had been granted by Libya to the same company, Aquitaine ... Where are the protests by Tunisia? ... It is futile, in the light of this evidence and the facts as they are known, for Tunisia to say ... that the area of the Concession has never been officially publicized by Libya ...".[3]

---

[1] *Libya–Tunisia* case, Libyan Counter-Memorial, p. 209, para. 524.

[2] *Ibid.* p. 18, para. 30.

[3] *Ibid.* p. 25, para. 50.

189. The *Second Libyan conclusion* reads as follows:

> "The different approaches taken by the maritime legislation of Libya and Malta make clear that Libya left open the northern limits to its continental shelf by virtue of its legislation whereas the Maltese legislation specified the extent of what it claimed to be its maritime jurisdiction. The concessions offered and granted by Malta pursuant to its legislation therefore are relevant to its boundaries of Malta's claims: they followed geomorphological features in a manner consistent with the 'exploitability criteria'. Libya, on the other hand, in granting its concessions did not purport thereby to limit the extent to [*sic*] its jurisdiction over the continental shelf."

In reply Malta makes the following points:

(*a*) The instruments to which Libya refers as "leaving open" the northern boundaries of its continental shelf were the Petroleum Law of 1955 and the Petroleum Regulations of the same year. These were promulgated a year before the final draft articles on the law of the sea prepared by the International Law Commission and three years before the 1958 Continental Shelf Convention, and therefore at a time when, though the general concept of the continental shelf was established, the details relating to delimitation were not. It is, therefore, hardly surprising that at that time Libya did not commit itself to a method of delimitation; and no importance can be attached to that omission one way or the other.

(*b*) As already stated, it is true that Malta, from the earliest days of its independence, openly claimed that the boundary of its shelf was an equidistance line. It adhered to that line consistently from then onwards – for eight years without Libyan reaction and, thereafter, notwithstanding Libyan reaction. It is correct to say that the concessions offered and granted by Malta are relevant to its claims. They show, indeed, that Malta treated areas up to the median line as falling within its jurisdiction and as being subject to its control. As appears very clearly from Map 3 of this Counter–Memorial and from Map 13 in the Libyan Memorial, the *southern* boundaries of Maltese blocks 12, 13, 14, 15 and 16 all coincide exactly with the median line.[1] The Libyan contention[2] that the sixteen offshore blocks offered by Malta in 1973 "followed the geomorphology of the area" partly misstates and partly misconstrues the situation. The misstatement lies in the pretence that the blocks in their entirety follow the geomorphology of the area. The blocks are quite clearly laid out on a geometric pattern with rectilinear boundaries unrelated to bathymetry except superficially in the eastern limits of Blocks 6, 11 and 16. The misconstruction lies in suggesting that the eastern limits of these three blocks reflect a Maltese conviction that its entitlement stopped at the edge of the Escarpment. There is no evidence of that and the explanation lies elsewhere in a simple practical consideration. One element in the payments due from a licensee to the Government is related to the surface area of the Concession. A licensee may reasonably be expected to pay for areas which are potentially relatively easily exploitable. But the attraction of paying a rental and other payments for an area of deep sea-bed, when other more interesting areas lie at lesser depths, is evidently small – or, at any rate, was so in the technology of 1973. For that and other entirely pragmatic reasons Malta limited the boundaries of the three blocks in question by, be it noted, straight, not bathymetric, lines which correspond only in the roughest terms to the edge of the escarpment.

---

[1] See Malta's Memorial, Vol. III, Map 3, and Map 3 of this Counter-Memorial.
[2] Libyan Memorial, p. 145, para. 9.33.

(*c*) It is difficult to know exactly what significance to attach to Libya's statement that in granting its concessions it did not purport to limit the extent "to" [*sic*] its jurisdiction over the continental shelf. If these words are to be taken at their face value, they appear to suggest that there is no correlation between Libya's grant of concessions and its continental shelf boundaries. If this is so, every reference to the grant of concessions by Libya must be deemed to be entirely without relevance as a factor in the determination of the boundary.

(*d*) At the same time, Malta is bound to draw to the attention of the Court a substantial and misleading distortion of the situation regarding Libya's grant of concessions. At p. 61 of the Libyan Memorial[1] there appears a reference to an offshore concession NC53. This is the most northerly and north-westerly of Libya's concessions, at any rate as
⑦ illustrated on Map 11 opposite p. 62 of the Libyan Memorial. There is, however, strong ground for doubting the accuracy of the representation on the map. A different version of the area of the same concession can be seen in Map 3 contained in Volume III (Maps) of the Maltese Memorial. In this different version the northern line of the concession is close to and appears generally to follow the direction of Malta's equidistance boundary. This discrepancy regarding the boundary of NC53 will, no doubt, be resolved once Libya produces a copy of the original text of the Concession from which the area granted can be verified. Until Libya does this, however, Malta must adhere to its view that this concession in particular reflects a measure of Libyan acceptance of the median line rather than any clear disregard for it. The basis on which Malta maintains its position is more fully set out in Annex 5.

190. Generally in this connection it may be recalled that the Court, in para. 96 of the 1982 Judgment, acknowledged the effect upon the boundary of the grant of concessions:

> "... The line of adjoining concessions, which was tacitly respected for a number of years, and which approximately corresponds furthermore to the line perpendicular to the coast at the frontier point which had in the past been observed as the *de facto* maritime

---

[1] Para. 4.44.

> limit, does appear to the Court to constitute a circumstance of great relevance for delimitation".

At the same time, it is important to note that the Court's emphasis on the grant of concessions was not limited to concessions as such but was really concerned with the grant of concessions as

> "indicia... of the line or lines which the Parties themselves may have considered equitable or acted upon as such".[1]

Thus viewed, what matters is not so much Malta's 1973 Concessions as Malta's 1965 and 1966 actions, which were unequivocal in a declaration of an equidistance line, coupled with the absence of adverse reaction thereto by Libya.

191. In the *Third conclusion* Libya argues that:

> "The position set forth by Libya in 1973 taking account of coastal lengths... lies far to the north of a median line and has been maintained by Libya. This line lies within the boundary zone which Libya proposes in this Memorial should be the basis for negotiations between the Parties to arrive at a precise line of delimitation".

Again, it is difficult to identify the thrust of this "conclusion". Is it meant to support some alleged "consistency" in Libya's position from 1973 to the present day? Or is it intended to show that that position is dictated by some clear and guiding principle? Such questions must remain for answer by Libya. But it is a fact that the stated theoretical basis for the 1973 Libyan line is not the same as that now advanced for resort to "the boundary *zone*" (the "Rift Zone") as the possible location of a negotiated line. It must be borne in mind that even on the Libyan approach to the task of the Court, which Malta does not share,[2] the negotiation following the Judgment of the Court must take place in the light of whatever applicable principles and rules of international law the Court may identify. Chance and coincidence have not been pleaded by Libya as relevant principles of international law. Yet the idea that there is greater force in the Libyan claim to a "border zone" in the "Rift Zone" because the 1973 line happens, so Libya asserts, to fall within it, appears to elevate accident to the level of guidance.

192. In its *Fourth conclusion* Libya asserts that

> "Libya has protested any activities of Malta falling within the areas considered to lie within Libya's continental shelf and has itself refrained from drilling in disputed areas until the matter of delimitation has been settled between the Parties. Similar restraint has not been exercised by Malta which, apparently pressed by its concession holders, has attempted to drill in areas which Libya considers fall under its jurisdiction".[3]

---

[1] *Tunisia–Libya* case. *I.C.J. Reports* 1982, p. 84, para. 118.

[2] See Part II above, paras. 68–74.

[3] Libyan Memorial, p. 148, para. 9.43.

Malta's reply:

(*a*) If by "any" Libya means "all", Libya has not protested *any* activities of Malta as aforesaid. Malta's "activities" in the area preceded Malta's 1973 concession grants and took the form of the open assertions of right to the area extending to the median line evidenced by the Note Verbale to Libya of 1965 and the continental shelf legislation of 1966.

(*b*) However, that is a small point compared with the fantasy of Libya's "restraint". Restraint is something normally thought of as a commendable virtue, involving some element of sacrifice or tolerance. In the period from 1976 to 1980, Libya's oil revenues amounted to over U.S. $75 billion,[1] equal to U.S. $3 million per head of the Libyan population. Libya itself has described its position in its Counter-Memorial in the *Tunisia–Libya* case in the following terms:

> "The growth of oil production from onshore sources in Libya was rapid and *Libya soon took its place among the major oil exporting countries of the world. Offshore Libya has also been fortunate*".[2]

Malta's revenues from oil were nil. At that level of income, Libya's disinclination to seek further oil is understandable. Malta, on the other hand, has to devote a very substantial part of its hardly earned foreign exchange to the purchase of oil. But if considerations of this kind are to be brought into the picture, it is material to recall Libya's persistent and successful efforts to prevent even the entry into force of the Special Agreement submitting the present dispute to the Court. Despite all endeavours by Malta, Libya procrastinated continuously by taking three years to negotiate the agreement and a further six to ratify it. Moreover the events of 1980 which prevented Malta from carrying on exploration activities in a location lying some 50 miles north of the median line are too well known to need repetition. The kind of thinking behind this use of language resembles that which underlies the Libyan contention, discussed above, that to the rich shall be given, even at the expense of the poor. In such thinking there is no place for the fundamental principle of international law relating to the equality of States.

193. The *Fifth* and last of *Libya's conclusions* drawn from its "brief resumé" of the conduct of the Parties, is that

> "Malta has consistently advocated delimitation along a median line and Libya has consistently refused to accept equidistance as the basis for an equitable delimitation in this situation."

To this *Malta replies*:

(*a*) It is true, of course, that Malta's position has been consistent throughout; and Malta welcomes Libya's admission to this effect.

---

[1] *International Financial Statistics* I.M.F., sec. 1982.

[2] P. 21, para. 41 Emphasis supplied.

(*b*) It is less true that "Libya has *consistently* refused to accept equidistance". On the contrary Libya's silence for eight years amounts to an acceptance of Malta's equidistance line. It is only since 1973 that Libya has expressed itself otherwise on the matter and in so doing it has varied its choice of guiding principle. In 1973 the argument was exclusively based on a certain version of proportionality and led to the proposal of a specific line; this has now been abandoned in favour of an undetermined line somewhere within the vast area described by Libya as the "Rift Zone".

194. To conclude on the issue of the conduct of the Parties, Malta submits that by its conduct over the years Malta has constantly and consistently applied the principle of equidistance and that Libya for eight formatively important years, from 1965–1973, refrained from giving Malta any reason to doubt the validity of that approach. This simple pattern of "conduct" can be viewed either as a cogent reflection of the equitable character of Malta's position or as evidence of acquiescence by Libya in Malta's position or as precluding Libya, in law as in fact, from challenging the validity of Malta's position. The words of Judge Ago are particularly pertinent here: "... consent evinced by inaction ...".[1] Moreover, regardless of the way in which this conduct is viewed, the other feature of the conduct of the Parties, namely, Libya's own conduct is, as shown both in Malta's Memorial and elsewhere in this Counter-Memorial, consistent only in its assertive and self-seeking character from the time when it was first put forward in 1973. But in terms of law it rests upon no consistent foundation. Libya's case to-day is in principle quite different from Libya's case a decade ago.

2. DELIMITATIONS WITH THIRD STATES

195. Libya appears to base its recourse to delimitations with third States as a relevant consideration upon the following phrase lifted from the Court's 1982 judgment:

> "... the circumstance of the existence and interests of other States in the area, and the existing or potential delimitations between each of the Parties and such States".[2]

As will be noticed, however, the words quoted are no more than a phrase. They lack an operative verb and the critical reader of the Libyan Memorial is left wondering what significance, if any, the Court attached to this "circumstance".

196. To find an answer one has to look at the Judgment as a whole. As a result, the following may be discerned.

197. The Court first refers to third States at p. 35, para. 20, in a section of the Judgment which opens with the words:

---

[1] *I.C.J. Reports* 1982, p. 97, para. 4.

[2] Libyan Memorial, p. 148, p. 9.44, quoting from the judgment in the *Tunisia–Libya* case, *I.C.J. Reports* 1982, p. 64, para. 81.

> "It should be emphasized that the only purpose of the description which follows is to outline the background, and not to define legally the area of delimitation nor to say how the Court views the various geographical features for the purposes of their impact on the legal situation.[1]

There then follows, on the next page, the first mention of third States:

> "So far as limits seawards are concerned, no delimitation agreement has been concluded by either Party with Malta; Tunisia has concluded an Agreement ... with Italy ..."

Up to this point then the mention of third States is entirely matter-of-fact.

198. The Court reverts to third States at p. 42, para. 33. Again in a "factual" context, the Court identifies

> "the Pelagian Block ... as a much wider region than that which can possibly be available to be delimited between the Parties",

and continues:

> "The northern and north-eastern parts of the Pelagian Block, where conflicting claims of the Parties exist, are situated in a region where claims of other States regarding the same areas have been made or may be made in the future. The Court has no jurisdiction to deal with such problems in the present case and must not prejudge their solution in the future."

199. Then, coming closer to the passage cited by Libya, the Court at p. 62 seeks to define the area which is legally relevant to the determination and says (at the end of para. 75):

> "The conclusion that these areas are not legally relevant to the delimitation between the Parties does not however lead to the conclusion by way of corollary that the whole area bounded by the coasts of both countries and by such seaward boundaries is reserved in its entirety for division between Libya and Tunisia. As mentioned above, the rights of other States bordering on the Pelagian Sea which may be claimed in the northern and north-eastern parts of that area must not be prejudged by the decision in the present case."

This reference, therefore, is no more than a formal saving of the position of third States.

200. From here the Court moves on to describe the positions of the Parties regarding "relevant circumstances". It records that Tunisia had specified among such circumstances "the situation of Tunisia, opposite States whose coasts are relatively close to its own, and the effects of any actual or prospective delimitation carried out with those States"[2] and

---

[1] *I.C.J. Reports* 1982, p. 34, para. 18.

[2] *Ibid.* p. 62, para. 76.

that Libya had mentioned "as a related factor, the existence of actual or prospective delimitations with third States in the region".[1]

201. Eventually, the Court begins its own discussion of "the relevant circumstances which characterize the area" and it is here that, entirely in passing, the Court used the phrase quoted so portentously in the Libyan Memorial:

> "Apart from the circumstance of the existence and interests of other States in the area, and the existing or potential delimitations between each of the Parties and such States, there is also the position of the land frontier ... to be taken into account".[2]

Seen thus in perspective, the Court's reference to third States is not a statement of a relevant factor, save to the extent that the Court is concerned not to prejudice the position of non-Parties to the case. The Court is in no way saying that consideration of the position of third States is an independent factor which can affect the delimitation between the Parties.

202. This analysis is borne out if, as one continues reading of the Judgment, one asks the question: Does the Court come back to this in any significant way? The answer is No. The only further references to third States are in its discussion of proportionality and in the operative paragraphs. In paragraph 130,[3] the Court states that

> "how far the delimitation line will extend north-eastwards will, of course, depend on the delimitations ultimately agreed with third States on the other side of the Pelagian Sea".

and concludes:

> "It is legitimate to work on the hypothesis of the whole of that area being divided by the delimitation line between Tunisia and Libya; because although the rights which other States may claim in the north-eastern portion of that area must not be prejudged by the decision in the present case, the Court is not dealing here with absolute area, but with proportions."

Lastly, in paragraph B(1) of the operative paragraphs the Court reserves the rights of third States and in paragraph C(3) declares that

> "the extension of this line northeastwards is a matter falling outside the jurisdiction of the Court in the present case, as it will depend on the delimitation to be agreed with third States."[4]

203. If this analysis of the Court's judgment of 1982 in its bearing upon reference to third States seems a trifle extended, it is so only because there is no other way, apart from unsupported assertion, in which one can counter the apparently intentional implication in the

---

[1] *Ibid.* p. 63, para. 77.

[2] *Ibid.* p. 64, para. 81.

[3] *Ibid.* p. 91.

[4] *Ibid.* p. 94.

Libyan Memorial that in some way the Court supports consideration of relations with third States generally as "a relevant circumstance" in a delimitation between two Parties. The Court is concerned with third States only for the purpose of ensuring that – as non-Parties – their positions are not formally affected by the decision of the Court.

204. It is, therefore, entirely irrelevant and inadmissible for Libya to introduce a suggestion that Malta's claim to continental shelf east of 18° E line of longitude "would therefore cut off any meaningful delimitation between Libya and Italy in the Ionian Sea".[1] What has that got to do with a delimitation between Libya and Malta? The Libyan proposition pre-supposes what has to be established and decided, namely, that there is (contrary to Malta's contention) an area of Libyan continental shelf which projects so far north in the Ionian Sea that there is a need for a "meaningful" (whatever that may mean!) delimitation between Libya and Italy. Equally self-serving is the proposition in the same paragraph that Malta's claim "would erase the obvious relationship that exists across this Sea between the coasts of mainland Italy and Libya". What is this "obvious relationship" other than *petitio principii.*

205. Turning to Libya's second "delimitation of interest", namely, that between Italy and Tunisia concluded in 1971, one must ask how does that affect the situation between Libya and Malta? If the argument is that the treatment of the islands of Pantelleria, Lampedusa, Linosa and Lampione detracts from the principle of equidistance, the point is one to be made in the context of the treatment of islands generally, not under the heading of "Delimitation with third States". If the argument is that in some way the agreement reflects the view of Italy and Tunisia that Malta should be disregarded when constructing the boundary, then it proceeds on an incorrect basis of fact. The Libyan Memorial is wrong in suggesting that

> "Apparently, the control points which served for the construction of the line are to be found along the baselines representing, on the Italian side, the entire southern coastline of Sicily ... and on the Tunisian side, the coast from Cap Bon to about the latitude of the Kerkennah Islands ..."[2]

As a moment's work with a pair of dividers will demonstrate, the extreme south-easterly terminus of the Italian–Tunisian line, Point 32,[3] is constructed as an equidistance point between Lampedusa and Malta.

206. The fact that in the west there may be an inconsistency with the Italian–Tunisian delimitation is a matter between Malta, Italy and Tunisia. But it cannot be invoked as a ground for rejecting the underlying principle of Malta's claim to equidistance. Nor is there, contrary to the Libyan suggestion, "a potential conflict" in the south

---

[1] Libyan Memorial, p. 149, para. 9.49.

[2] Libyan Memorial; p. 150, para. 9.50.

[3] Libyan Memorial, Map 15, opposite page 150.

with the Tunisian/Libyan delimitation "which should flow from the Court's 1982 Judgment". That is expressly excluded by the terms of the Judgment.

207. The full extravagance of Libya's recourse to the positions of third States appears in paragraph 9.57. In the east Malta is said to be making a "vast" claim extending into areas lying between Libya and third States (unspecified). But why is Malta's claim said to be "vast"? It is certainly not as vast as Libya's entitlement on an equidistance basis along the whole of its coastline. What must not be forgotten is that by virtue of the simple geography of this case, it involves, proportionally speaking, much more of Malta's continental shelf than it does of Libya's and that Libya's claims upon Malta make much greater inroads proportionally upon Malta's overall continental shelf rights than do Malta's claims upon Libya. Even if Malta were accorded more than its full claim Libya would still be left with a continental shelf which by comparison with Malta's would deservingly merit the description "vast".[1]

208. But apart from these inherent defects in this part of the Libyan argument, the most striking flaw in Libya's recourse to "delimitations with third parties" is its evident inconsistency with the essentials of the Libyan case. Malta, we are repeatedly told, can have no rights extending beyond her limited "natural prolongation" in the physical sense and, in particular, cannot have rights which project beyond the edge of the Sicily–Malta and the Medina Escarpments. Libya, however, does not regard itself as bound by these limitations but, so it argues, should be allowed to develop its claims right through this "forbidden" area in order to establish a delimitation with "third States". Why is it, one is bound to ask, that considerations of geology, geomorphology and of the principle of natural prolongation which are so strenuously adduced as the basis of Libya's case against Malta, have no reciprocal applicability in relation to Libya's ambitious claims?

3. SECURITY INTERESTS

209. Having devoted additional consideration in Chapter 9 of its Memorial to the "Conduct of the Parties" and to "Delimitations with Third States"[2], the Libyan Memorial is content to limit its discussion of the remaining factors "Security interests", "Islands" and "Economic and related factors" to the much shorter treatment accorded to them in the chapter on the "Principles and Rules of International Law Applicable to the Present Case". Nonetheless, the relative brevity of their examination by Libya does not relieve Malta of the need to respond, however briefly, to some of the observations made in those pages.[3]

210. As to the relevance of security interests, Malta concurs with

---

[1] See Malta's Memorial, pp. 36–37, paras. 117–118 and p. 125, para. 257; cf. pp. 119 and 121 and Figures A and B on pp. 118 and 120.

[2] Libyan Memorial pp. 143–153.

[3] Malta's treatment of this subject in its Memorial is to be found at p. 114, para. 232.

10

Libya in identifying them as material to the present case. However, Malta's view of the facts is entirely different from Libya's. The Libyan Memorial is quite wrong in seeking to emphasize that the weight of Malta's security interests lies to the north of the Maltese islands, with the implication that Malta does not have significant security interests in other directions. The fact is that, as an island, Malta has security interests in every direction and all of them are seawards; these interests are the greater in whatever direction it is that the threat comes from. As Libya recalls in opening this section of the argument, it is not tolerable to have a foreign State or its licensees exploit resources off one's own coasts.[1] The impact upon the security, or sense of security of a State, is related not to geology, geomorphology, bathymetry or natural prolongation, but to simple considerations of distance. In view of this, in a situation where what is sought is an equitable result, considerations of security would appear to militate in favour of equidistance more heavily than they do in favour of a line which lies closer to the territory of one State than to that of the other. This approach operates with particular cogency when the claim of one State is brought so close to the territory of the other as Libya's is to Malta.[2] For the moment it is enough to point out that the distance from the northern edge of the "Rift Zone", as defined by Libya for the purposes of delimitation, to the nearest point on the coast of Malta is barely 7 nautical miles while the distance from the southern edge of the same zone to the nearest point on the Libyan coast is about 140 nautical miles. Considerations relevant to Malta's interest in exercising political authority in respect of continental shelf areas appurtenant to it are developed in paras. 286–292 below.

4. ISLANDS

211. Whatever advantages there may be in the system of simultaneous exchange of written pleadings in a case such as the present, the system does carry with it the risk that the opening pleadings may not focus on identical issues. This is nowhere more strikingly apparent than in Libya's treatment of "islands" as a relevant factor. The question of islands is dealt with extensively in Malta's Memorial[3] and the matter will be mentioned again in this Counter-Memorial. Libya, for reasons which are presumably tactical in nature, has dealt only briefly with this question and even then only by reference to islands generally, without identifying the situation of Malta in its true and dominant terms, as one of an island *State*.[4] Indeed, the only authority adduced on the subject in the Libyan Memorial is a passage in the *Anglo–French Arbitration* dealing with the Channel Islands. These islands, of course, are in no

---

[1] Libyan Memorial, p. 110, para. 6.67.

[2] See Map 4 opposite.

[3] See especially Chapter VI, pp. 43–58 and Chapter VII pp. 61–96.

[4] Libyan Memorial pp. 110–113, paras. 6.79–6.86.

relevant way comparable to Malta, being not an independent State, but dependent Islands with an extreme dislocation from the mainland territory of the parent State coupled with close proximity to the opposite State.

5. Economic and Related Factors

212. Libya has dealt no more extensively with economic and related factors than it has with security interests,[1] contenting itself with a general admonition against attributing weight to arguments of relative wealth or size of population. This is entirely understandable in view of the fact that the whole weight of economic advantage is with Libya.

213. Malta has opened up the subject in its Memorial in the short statement at the beginning under the heading "Importance to Malta of the Present Case",[2] in the statement of the economic background[3] and, in more detail, in the section entitled "Certain Equitable Considerations of Particular Relevance in the Present Case".[4] In particular, it has commented on the very passage from the Court's 1982 Judgment which Libya has cited at p. 113, para. 6.87. There is therefore, nothing to be gained by developing further at this point Malta's case relating to the relevance of economic considerations. Malta's basic position is, however, restated below, particularly in Chapter X.

---

[1] *Ibid.* pp. 113–114, paras. 6.87–6.89.
[2] Malta's Memorial, p. 3, paras. 4–6.
[3] *Ibid.* pp. 15–16.
[4] *Ibid.* pp. 109–114.

CHAPTER IV

PROPORTIONALITY

1. THE RÔLE ALLOTTED TO PROPORTIONALITY IN THE LIBYAN MEMORIAL

(1) *In Principle*

214. The genesis of the argument of the Libyan Government related to proportionality appears to be the position adopted by the Libyan delegation in the course of the talks on 23 and 24 April 1973.[1] The Libyan delegation stated that in the draft agreement the respective lengths of the portion of the coastline of Libya facing Malta (from the Tunisian border eastwards to Misurata) had been taken into consideration in determining the dividing line. Thus the distance between the two coastlines was divided "in the same proportion that the two shorelines bear to each other". At these meetings the Maltese delegation maintained the legal validity of the equidistance line.

215. Chapter 6 of the Libyan Memorial is devoted to a fairly extensive statement of "The principles and rules of international law applicable to the present case" from Libya's point of view. In this *exposé* the main headings are as follows:-

"A. Principles and Rules Governing a State's Legal Basis of Title to the Continental Shelf".
"B. Principles and Rules Governing the Delimitation of the Continental Shelf".
"C. The Rôle of Proportionality".

216. It is clear from both the ordering and the content of the chapter that proportionality is accorded a secondary significance. Much of the chapter is devoted to the topic of natural prolongation, and the list of "principles and rules"[2] does not include a reference to proportionality. Moreover, in the "Conclusions" to the chapter[3] there is no emphasis upon and, indeed, no single reference to, the question of proportionality.

217. In paragraph 6.43 it is stated that "the element of proportionality will be discussed in the light of its rôle as a test of the equity of the result produced", and the subordinate rôle of proportionality indicated by this formulation is reinforced by the passages which elaborate upon "the rôle of proportionality".[4] Thus proportionality is stated to be a "test".[5]

---

[1] See Libyan Memorial para. 4.35 and Annex 39 and 40.

[2] *Ibid.* pp. 92 to 114.

[3] *Ibid.* para. 6.94.

[4] *Ibid.* paras. 6.90-6.93.

[5] *Ibid.* Twice in para. 6.90, twice in para. 6.91, twice in para. 6.92 are four times in para. 6.93.

218. The primary statements of principle relative to the rôle of proportionality are as follows. First, the Libyan Memorial quotes from the Court of Arbitration in the *Anglo–French Arbitration*[1] when it said:

> "Proportionality ... is to be used as a criterion or factor relevant in evaluating the equities of certain geographical situations, not as a general principle providing an independent source of rights to areas of continental shelf."

In the same connection the Libyan Memorial reiterates the view that proportionality is "not a legal principle which itself gives rise to rights".[2]

219. Part III of the Libyan Memorial is concerned with "the application of the law to the facts and relevant circumstances of this case" and consists of four chapters, of which the last, Chapter 10, is entitled "the achievement of an equitable result". In a first part, the text of Chapter 10 emphasises the "physical factors of natural prolongation" and other "relevant circumstances" of a "geographical character".[3] In the second part of the chapter[4] the Libyan Memorial returns to "the test of proportionality" and explains how, in the Libyan view, the test is to be applied in the present case. The question of the applicability of the test will be reserved for later examination.[5] For present purposes, it is sufficient to note that the Libyan Memorial applies the "test" in the particular form of "proportionality in the light of the ratios between the lengths of the coasts of the Parties".[6]

220. The overall treatment of the issue of proportionality in the Libyan Memorial displays two characteristics. First, the relevant formulations and exposition take up only slightly more than *seven* pages in a Memorial consisting of 160 pages of text. Secondly, the position of principle adopted is to the effect that proportionality is not an independent source of rights, but a "test" of the equity of the result produced by the application of the pertinent principles and rules governing the delimitation of the continental shelf.

(2) *In Practice*

221. As a matter of practice, the rôle accorded to the element of proportionality in the Libyan Memorial is much more substantial than the formulations offered in that pleading indicate. Far from being used as a means of checking, testing or verifying the equitable nature of a result achieved by the application of the pertinent principles and rules, the Libyan Government has relied upon proportionality as a dogmatic basis for what is in effect a delimitation. Indeed, in the history of the

---

[1] Decision of 30 June 1977, para. 101.

[2] Libyan Memorial, para. 6.90.

[3] Libyan Memorial, pp. 154–155, paras. 10.01–10.05.

[4] *Ibid.* pp. 155–160, paras. 10.06–10.18.

[5] See below paras. 237–251.

[6] Libyan Memorial, pp. 159–160, para. 10.18.

dispute the meetings of 23 and 24 April 1973[1] reveal the primary reliance upon a certain conception of proportionality. While the Libyan Government has continued to rely upon this conception of proportionality in its Memorial it must be noted that the actual basis of its claim is now the "Rift Zone", has therefore changed.

222. The use of proportionality as a primary criterion or method of delimitation is, of course, incompatible with legal principle, and the Libyan argument necessarily involves an unhappy tension between the radical and arbitrary rôle actually accorded to proportionality, and the rôle justified by legal principle. Stripped of the detail, the Libyan position is based upon a highly abstract conception involving a partition of the seabed in accordance with a specialised version of the test of proportionality, which in effect becomes an independent criterion advanced as the basis for a claim to a just and equitable share. This approach appears very clearly in the course of the meetings of 23 and 24 April 1973 and it is evident in the following passage in the Libyan Memorial:

> "In the present case, although the dispute came to a head as a result of conflicting petroleum concessions granted by the Parties, it emerged out of differences of view regarding the principles of international law which should govern the delimitation of the continental shelf between Malta and Libya. Malta has persistently adhered strictly to "the Median Line", i.e. the "principle" of strict equidistance. Libya, on the other hand, has taken the view that, in the circumstances of the very small island group of Malta, and the large continental State of Libya with its extended coastline on the southern side of the Mediterranean, the "equidistance principle" is wholly inappropriate and inapplicable. *From an early stage, Libya has taken the view that the solution should be fair and reasonable, taking fully into account the circumstances of the particular case.*"[2]

223. This passage from the Libyan pleadings occurs in the context of an account of "the emergence of the dispute" and, as subsequent passages indicate,[3] the basis of the solution regarded by the Libyan Government as "fair and reasonable" (and propounded in 1973) was a version of proportionality in terms of the ratio of the lengths of the coastlines considered relevant for the purpose of such apportionment. The use of proportionality as an independent method of apportioning the intervening areas of seabed thus appears in the diplomatic record, and in the Libyan Memorial this episode is linked directly with the legal argument and submissions of the Libyan Government in the present proceedings.

224. The employment of proportionality in the form proposed by the Libyan delegation at the talks in April 1973 involves the adoption of

---

[1] See Malta's Memorial, p. 23, para. 65; also see Annex 3 to that Memorial.

[2] Libyan Memorial, p. 53, para. 4.24, Emphasis supplied.

[3] *Ibid.* pp. 57–59, paras. 4.33–4.35.

the position that each State should have a "just and equitable share" of the continental shelf areas in dispute. This approach is incompatible with the relevant legal principles and the doctrine of the just and equitable share has been consistently rejected by international tribunals.

225. In the *North Sea Continental Shelf* cases this Court expressed the following views:

> "[T]he doctrine of the just and equitable share appears to be wholly at variance with what the Court entertains no doubt is the most fundamental of all the rules of law relating to the continental shelf, enshrined in Article 2 of the 1958 Geneva Convention, though quite independent of it – namely that the rights of the coastal State in respect of the area of continental shelf that constitutes a natural prolongation of its land territory into and under the sea exist *ipso facto* and *ab initio*, by virtue of its sovereignty over the land, and as an extension of it in an exercise of sovereign rights for the purpose of exploring the seabed and exploiting its natural resources. . . .
>
> It follows that even in such a situation as that of the North Sea, the notion of apportioning an as yet undelimited area, considered as a whole (which underlies the doctrine of the just and equitable share), is quite foreign to, and inconsistent with, the basic concept of continental shelf entitlement, according to which the process of delimitation is essentially one of drawing a boundary line between areas which already appertain to one or other of the States affected. The delimitation itself must indeed be equitably effected, but it cannot have as its object the awarding of an equitable share, or indeed of a share, as such, at all – for the fundamental concept involved does not admit of there being anything undivided to share out."[1]

226. Similarly, in the *Anglo–French Continental Shelf Arbitration* the Court of Arbitration related the same thinking to certain French arguments based upon proportionality. In the words of the Court:

> "The equitable delimitation of the continental shelf is not, as this Court has already emphasised in paragraph 78, a question of apportioning – sharing out – the continental shelf amongst the States abutting upon it. Nor is it a question of simply assigning to them areas of the shelf in proportion to the length of their coastlines; for to do this would be to substitute for the delimitation of boundaries a distributive apportionment of shares. Furthermore, the fundamental principle that the continental shelf appertains to a coastal State as being the natural prolongation of its territory places definite limits on recourse to the factor of proportionality. As was emphasised in the *North Sea Continental Shelf* cases (I.C.J. Reports 1969, paragraph 91), there can never be

---

[1] *I.C.J. Reports*, 1969, p. 22, paras. 19, 20.

> a question of completely refashioning nature, such as by rendering the situation of a State with an extensive coastline similar to that of a State with a restricted coastline; it is rather a question of remedying the disproportionality and inequitable effects produced by particular geographical configurations or features in situations where otherwise the appurtenance of roughly comparable attributions of continental shelf to each State would be indicated by the geographical facts. Proportionality, therefore, is to be used as a criterion or factor relevant in evaluating the equities of certain geographical situations, not as a general principle providing an independent source of rights to areas of continental shelf."[1]

227. Finally, this Court was careful to emphasise the difference between equity, as a vague appeal to distributive justice, and the application of equitable principles, as a part of positive international law, in its Judgment in the *Tunisia–Libya Continental Shelf* case:

> "Equity as a legal concept is a direct emanation of the idea of justice. The Court whose task is by definition to administer justice is bound to apply it. In the course of the history of legal systems the term "equity" has been used to define various legal concepts. It was often contrasted with the rigid rules of positive law, the severity of which had to be mitigated in order to do justice. In general, this contrast has no parallel in the development of international law; the legal concept of equity is a general principle directly applicable as law. Moreover, when applying positive international law, a court may choose among several possible interpretations of the law the one which appears, in the light of the circumstances of the case, to be closest to the requirements of justice. Application of equitable principles is to be distinguished from a decision *ex aequo et bono*. The Court can take such a decision only on condition that the Parties agree (Art. 38, para. 2, of the Statute), and the Court is then freed from the strict application of legal rules in order to bring about an appropriate settlement. The task of the Court in the present case is quite different: it is bound to apply equitable principles as part of international law, and to balance up the various considerations which it regards as relevant in order to produce an equitable result. *While it is clear that no rigid rules exist as to the exact weight to be attached to each element in the case, this is very far from being an exercise of discretion or conciliation; nor is it an operation of distributive justice.*"[2]

228. The reliance upon a proportionality doctrine lying outside the framework of legal principle involves the Libyan Government in an appeal to a self-serving version of distributive justice which entails not a delimitation but an apportionment. The position is underlined by Map

---

[1] Decision of 30 June 1977, *International Law Reports*, Vol. 54, p. 6, para. 101.

[2] *I.C.J. Reports*, 1982, p. 60, para. 71. Emphasis supplied.

⑤ 9 in the Libyan Memorial, which represents the Libyan proposal of April 1973.[1] The line indicated reflects no known method of delimitation in accordance with law and is impressionistic and arbitrary, as befits an approach based upon apportionment.

(3) *Contradictions in the Libyan Argument*

229. The argument of the Libyan Memorial in respect of the issues concerning proportionality is disfigured by two major contradictions. The first lies in the assertions of principle – that proportionality is "not a legal principle which itself gives rise to rights".[2] These assertions stand in opposition to the large significance *in effect* accorded to proportionality in the general economy of the Libyan case and in the *Submissions* addressed to the Court. This aspect of the Libyan Memorial has been explored in the preceding paragraphs.

230. The second contradiction stems from the insistence of the Libyan Memorial on a large rôle *in practice* for proportionality (in a certain extra-legal version) and the prominent rôle also accorded to "the principle of natural prolongation". Thus in the *Submissions* of the Libyan Government paragraphs 2 to 4 relate to "the principle of natural prolongation" and paragraphs 5 to 7 relate to the issue of proportionality.

231. The Court is, in the Libyan Memorial,[3] asked to approve the principle that the delimitation should be "within, and following the general direction of, the Rift Zone as defined in this Memorial".[4] In the pages of the Libyan Memorial considerable effort is devoted to establishing the legal significance of natural prolongation and, consequently, the factual relevance of the "Rift Zone" as an alleged "fundamental discontinuity" in the continental shelf.[5]

232. Here is a remarkable curiosity of legal logic. Paragraph 4 of the Libyan Submissions invokes "the principle of natural prolongation", and the existence of "a fundamental discontinuity in the seabed and subsoil" as "a criterion for delimitation of continental shelf areas in the present case". *However, there is no logical connection between the lengths of coastlines and the ratio of those lengths, on the one hand, and the incidence of geological and geomorphological features in the seabed, be they "fundamental discontinuities" or not, on the other.* Thus the concept of proportionality, in the form of the ratios of lengths of coastlines, has no relation whatsoever to the principle of natural prolongation. Indeed, this view is given clear and emphatic expression in the Libyan Counter-Memorial addressed to this Court in the *Tunisia–Libya* case, in the following passage:-

> "In Libya's view, the concept of proportionality is applicable

---

[1] See also Map 4 of this Counter-Memorial which reproduces the line proposed in 1973.

[2] Libyan Memorial, p. 114, para. 6.90.

[3] *Ibid.* pp. 163–164.

[4] *Ibid.* p. 159, para. 10.18 and the Submissions, para. 9.

[5] Libyan Memorial, pp. 84–92 and 97–104.

> solely to areas where the application of the principle of natural prolongation leads to conflicting results, or where (as in the present case) the question put to the Court requires it to give effect to relevant circumstances which might create a "marginal area" of divergence.... Proportionality has no place in connection with *de jure* appurtenance. Indeed, to impose proportionality as a restraint upon a delimitation of areas of shelf that *de jure* and *ab initio* appertain to State A, in favour of State B, because of the proportion borne by its smaller (theoretical) area of shelf to the length of its longer (theoretical) coastlines, would be contradictory to the fundamental legal concept that the continental shelf is the natural prolongation – in that example – of the landmass of State A into and under the sea."[1]

233. In the Submissions,[2] and generally, the Libyan Memorial presents the "natural prolongation" argument and the "proportionality" argument as producing a coincident result, namely a line somewhere within the "Rift Zone".[3] Such coincidence where it occurs at all is only a chance result, and it can have no persuasive value. *Unless the coincidence has some legal significance, it is a meaningless correlation* (like that between the stork population on the island of Bornholm and the human population on the mainland of Sweden: the standard example of such a correlation).

234. The insignificance of the coincidence can be demonstrated in the following way. Each principle or criterion is given equal importance, and if the two approaches had produced non-coincident lines of division, some method of reconciliation would have been necessary. However, when proportionality is offered as a method *tout court* of achieving distributive justice, rather than a retrospective test of the overall equity of a delimitation, it can only operate on its own plane and thus bears no relation either to geology in general or to natural prolongation in particular. In short, the reliance upon natural prolongation as a principle is logically in collision with the substantial rôle given to proportionality virtually as a method of delimitation. The invention of a casual coincidence of result in the Libyan Memorial provides no genuine way out of the logical difficulty.

235. The illogicality of the Libyan argument can be summarised thus. If the proportionality argument is valid, the natural prolongation principle is irrelevant. If the latter principle is valid, the proportionality argument is irrelevant. A factual "coincidence" of the solutions produced by the two principles does not obviate the contradiction between the two principles. After all, in this case the physiography of the seabed has nothing to do with the lengths of the coastlines of the two

---

[1] Libyan Memorial in *Tunisia–Libya* case, p. 205, para. 310. In the following paragraph the Libyan pleading quoted the decision of 30 June 1977 in the *Anglo–French Arbitration*, para. 101 (quoted in the present Counter-Memorial, above, para. 226).

[2] Paragraph 9.

[3] As shown on Map 17, with overlay, following p. 160.

States. No Legal or other connection exists between the "Rift Zone" and the Libyan coastline between the Tunisian border and Misurata, which is the basis of the Libyan "ratio of coastal lengths" calculation. Moreover, as a matter of historical fact, the Libyan proposal of April 1973 was not based upon geological features either in conception or in fact.

236. The only attempt in the Libyan Memorial to reconcile the two principles occurs in the following passage:

> "Although not a legal principle which itself gives rise to rights, proportionality as a factor or guide is intimately connected with the concept of the continental shelf based on natural prolongation; it may even be said that it is the necessary logical consequence of this concept, since its purpose is to ensure that each natural prolongation will be accorded its appropriate weight."[1]

Far from effecting a reconciliation, this passage simply restates, indeed underlines, the problem. The final assertion, that the purpose of proportionality is to give each natural prolongation its "appropriate weight", makes no sense and effectively contradicts the use of proportionality in the Libyan Memorial, which depends not on the alleged extent of natural prolongations but on the lengths of coastlines, or at least selected coastlines.

2. The Correct Approach to the Issue of Principle

(1) *The Proper Function of Proportionality*

237. The correct view of proportionality, in legal terms and justified by precedent and principle, is that the rôle of proportionality must depend upon the general legal framework. Thus the concept of proportionality is "inherent in the notion of a delimitation in accordance with equitable principles", as the Court pointed out in the *Anglo-French Continental Shelf* case.[2] The same Court emphasised that "Proportionality is not in itself a source of title to the continental shelf, but is rather a criterion for evaluating the equities of certain geographical situations".[3] Indeed, such statements of principle are to be found in the Libyan Memorial itself and the Memorial refers to "proportio-

---

[1] Libyan Memorial, p. 115, para. 6.90.

[2] *Op. cit.*, para. 98.

[3] *Op. cit.*, para. 246; and see also paras. 99, 100. The latter paragraph deserves quotation in full:-

> "100. A State's continental shelf, being the natural prolongation under the sea of its territory, must in large measure reflect the configuration of its coasts. Similarly, when two "opposite" or "adjacent" States abut on the same continental shelf, their continental shelf boundary must in large measure reflect the respective configurations of their two coasts. But particular configurations of the coast or individual geographical features may, under certain conditions, distort the course of the boundary, and thus affect the attribution of continental shelf to each State, which would otherwise be indicated by the general configuration of their coasts. The concept of "proportionality"

nality" as a "test" of the equity of the result produced by the application of other principles.[1]

238. In the same connection it is the general framework which matters in the choice of a method of delimitation. This choice in any given case is to be determined in the light of the geographical and other relevant circumstances and of the fundamental norm that the delimitation must be in accordance with legal principles.[2] Consequently, the concept of proportionality has no *a priori* rôle in delimitation cases and whether it has a rôle and, if so, the precise nature of that rôle, must be dependent on the circumstances of each case. In the *Anglo–French Continental Shelf* case the Court stated the position with great clarity in the passage of the decision set forth above.[3]

239. In the present proceedings the Libyan Government not only invokes the test of proportionality but invokes a particular version of proportionality based upon the ratio of the lengths of the respective coastlines regarded as relevant for the purpose. This version of the concept was formulated by this Court in the *North Sea* cases but in such a way as to make clear that the rôle accorded to proportionality, and the version employed, depended on the particular situation of three adjoining States located on a concave coast.[4] Thus the Court of Arbitration in the *Anglo–French Continental Shelf* case expressed the point in these terms:

> "In particular, this Court does not consider that the adoption in the *North Sea Continental Shelf* cases of the criterion of a reasonable degree of proportionality between the areas of continental shelf and the lengths of the coastlines means that this criterion is one for application in all cases. On the contrary, it was the particular geographical situation of three adjoining States situated on a concave coast which gave relevance to that criterion in those cases."[5]

240. It may be recalled that in the *Anglo–French Continental Shelf* case the French Government had invoked the "ratio of the lengths of the respective coasts" argument in two respects: first, with reference to the boundary in the Channel Islands region, and secondly, the course of the boundary in the Atlantic region. The Court specifically rejected this

---

merely expresses the criterion or factor by which it may be determined whether such a distortion results in an inequitable delimitation of the continental shelf as between the coastal States concerned. The factor of proportionality may appear in the form of the ratio between the areas of continental shelf to the lengths of the respective coastlines, as in the *North Sea Continental Shelf* cases. But it may also appear, and more usually does, as a factor for determining the reasonable or unreasonable – the equitable or inequitable – effects of particular geographical features or configurations upon the course of an equidistance-line boundary."

[1] Libyan Memorial p. 114, para. 6.90 and p. 97, para. 6.43.

[2] *Anglo–French Continental Shelf* case, Decision of 30 June 1977, para. 97; *Tunisia–Libya Continental Shelf case, I.C.J. Reports*, 1982, pp. 59–60, paras. 70, 71.

[3] See para. 226.

[4] *I.C.J. Reports*, 1969, p. 49, para. 91 (at p. 50); p. 52, para. 98; pp. 53–54, para, 101.

[5] *Op. cit.*, para. 99.

form of the French argument and did so in both respects,[1] thus underlining the proposition (in paragraph 99 of the decision, above) that this criterion "is not one for application in all cases".

(2) *Irrelevance of Proportionality in terms of Coastal Lengths in the Present Case*

241. The rôle, such as it is, of proportionality in the case of opposite States abutting upon the same continental shelf may take two forms. Proportionality may be invoked as a general test of the equity of a solution arrived at by means of various equitable principles. In the case of opposite States, the use of the method of equidistance involves a more or less *ex hypothesi* compatibility with the test of proportionality, since both coasts are given equal value.

242. The second form which proportionality may take involves the need to make adjustments to abate disporportionate effects resulting from "the presence of islets, rocks and minor coastal projections",[2] or from the presence of islands "wholly detached" from the mainland and anomalous in relation to the "primary" equitable boundary.[3] No such causes of distortion exist in the circumstances of the present case; and the equidistance method produces the solution which satisfies the "test of proportionality", as a general means of evaluating the overall equitableness of that result.

3. THE GENERAL TEST OF EQUITY ESTABLISHES THE VALIDITY OF MALTA'S CLAIM TO A MEDIAN LINE

(1) *Proportionality: Rebuttal on the Facts*

243. It is Malta's position that the test of proportionality in terms of the ratio of the lengths of coastlines considered to be relevant for the purpose is not applicable in the circumstances of the present case. At the same time it is necessary to point out that the result of applying the method of equidistance is by no means incompatible with equitable principles.

244. The actual relationship of Maltese and Libyan coasts, demonstrated by the trapezium figure included in the Memorial of Malta,[4] produces a situation in which the equidistance method reflects the essential elements in the geographical framework. Consequently, Libya receives a broad wedge of shelf which reflects the west to east extension of Libyan coasts, and conforms in terms of lateral reach with the principles of non-encroachment and of the equality of coasts in generating shelf rights. Malta receives an area of shelf which reflects the same principles of non-encroachment and of equality of coasts.

---

[1] *Op. cit.*, paras. 98–99; para. 166; paras. 195 *et seq.*; para. 246.

[2] *North Sea Continental Shelf* cases, *I.C.J. Reports*, 1969, p. 36, para. 57; *Anglo–French Continental Shelf* case, *op. cit.*, paras. 100, 101, 248–251.

[3] *Anglo–French Continental Shelf* case, *op. cit.*, paras. 199, 201, 202.

[4] Malta's Memorial, p. 120.

245. The entitlement of Malta depends upon the *relationship* (opposite) and the *distance between* Libya and Malta. The distance factor ㉑ has a certain effect demonstrated by Diagrams A and B in Figure 5. If it is assumed that the coastal lengths of States 1 and 2 remain constant, then the effect of State 1 (as the apex of a trapezium) receding from (Diagram A) or advancing toward (Diagram B) State 2 can be assessed. The ratio of the areas of the two sectors of the trapezium, divided by the equidistance line, remains constant, whatever the value of *h*, the distance between the two coasts. The effect of the equidistance method is always to reflect the *equal* lateral reach of jurisdiction from the coasts of States 1 and 2. Thus the value *h* is always shared:[1] whereas in the Libyan scheme of things State 2 receives a very high proportion of the areas dividing the two States, however great the distance between them.

(2) *The Median Line does not call for the Refashioning of Geography*

246. The fundamental doctrine of continental shelf law is that the framework of equitable delimitation is established by the dominant geographical features. Such dominant features may include both the coastal features and the relationships of such coastal features. They also may include mainland coasts, such as those of Libya, and island States, such as Malta. There are 38 island States in existence and the coasts of such States generate continental shelf rights in the same way as other coasts.

247. It is the dominant geographical features which indicate the equitable delimitation, and only "incidental special features" can justify some abatement of the effects of geographical data.[2] The Libyan argument based upon proportionality by reference to the length of coastlines is inconsistent with legal principle since it is a call for a substantial refashioning of geography and such a course of action has been rejected by this Court in the *North Sea* cases[3] and also by the Court Arbitration in the *Anglo–French Continental Shelf* case.[4]

248. Given the relationship of the coasts of Malta and Libya there is no basis for resort to proportionality in the form invoked by the Libyan Memorial. The purpose of proportionality is to maintain equity *within the general framework of geographical data and relevant legal principles.* It cannot be used to *re-order* the dominant geographical (and political) features of the particular case. The requirement of equity – indeed, "the only absolute requirement of equity" – is that "one should compare like with like", as the Court pointed out in the *Tunisia–Libya Continental Shelf* case.[5] The difference in the geographical identity of Malta and Libya is so marked that the introduction of the Libyan version of proportionality would be incompatible with that "absolute require-

---

㉒ [1] See Figure 6.

[2] *North Sea Continental Shelf* cases, *I.C.J. Reports*, 1969, p. 50, para. 91. See also the *Anglo–French Continental Shelf* case, *op. cit.*, paras. 100, 101.

[3] *Ut supra.*

[4] *International Law Reports*, Vol. 54, p. 6, paras. 101, 248.

[5] *I.C.J. Reports*, 1982, p. 76, para. 104.

ment" of equity. In consequence the respective coasts of the opposite States, Malta and Libya, must be given their normal effect in generating shelf rights, on the basis of the principle of distance, the significance of which has been considered in the Memorial of Malta,[1] and again in this Counter Memorial, both in relation to entitlement and to delimitation.[2]

(3) *The Libyan Position disregards the Principle of Non-Encroachment*

249. The argument of the Libyan Memorial based upon proportionality is offered as an autonomous principle and it necessarily lacks a context, a proper relation to other pertinent legal and equitable principles. It has already been pointed out that the argument derived from the ratio of coastal lengths has no logical connection with the principle of natural prolongation, and is in fact antipathetic to that principle.[3] The argument is similarly incompatible with the principle of non-encroachment, which remains a fundamental aspect of the law relating to continental shelf delimitation.

250. In the case of opposite States abutting upon the same continental shelf the equidistance principle takes care of the problem of "cut-off" with which the Court was preoccupied in the *North Sea* cases.[4] The matter can be expressed by saying that the issue of encroachment does not arise. The Libyan argument, precisely because it seeks to refashion geography, proposes a massive breach of the principle of non-encroachment.

251. The Libyan argument rests upon a misconception: that the generation of shelf rights rests upon *length* of coasts. It does not. The generation of shelf rights depends upon the pertinent control points and the measurements taken from them in order to give effect to the distance principle; and, in the case of opposite States, this will produce an equidistance line. In other words, coasts have a "distance" significance and not merely a "length" significance. Indeed, even when the Libyan version of proportionality is applicable, resort is to be had to "coastal fronts" in making the necessary calculation, an example of the relative significance of coastal length.[5]

4. THE EQUITY OF THE MEDIAN LINE CONFIRMED BY THE PRACTICE OF STATES

(1) *Delimitations Involving Island States*

252. In its Memorial[6] Malta recalled the considerable body of State

---

[1] Malta's Memorial, paras. 248–255.

[2] See above, in particular, paras. 122–132 and 153–158.

[3] See above, paras. 230–236.

[4] *I.C.J. Reports*, 1969, p. 31, para. 44; pp. 34–36, paras. 51–57; pp. 46–47, para. 85; p. 49, para. 89; p. 53, para. 101. See also the *Tunisia–Libya Continental Shelf* case, *I.C.J. Reports*, 1982, pp. 118–122, paras. 65–76, Separate Opinion of Judge Jiménez de Aréchaga.

[5] *North Sea Continental Shelf* cases, *I.C.J. Reports*, 1969, p. 52, para. 98; p. 54, para. 101, D(3).

[6] Chapter VII, sections 2–5.

practice supporting the view that, in circumstances comparable to those of the present case, the equidistance method produces an equitable result. This body of State practice necessarily establishes that the equidistance method, in the cases of island States opposite both distant and non-distant mainlands, satisfies the factor of proportionality *in the general form in which it can be said to apply to the case of opposite States*, that is to say, as a *test* of the overall equitableness of the result. It will be appreciated that "equity" and the test of what is equitable cannot be conceived in terms of an intellectual or legal abstraction, but must reflect values and standards current and generally accepted in the community of States at the present time. In the absence of a previous decision of this Court or another international tribunal relating to similar geographical and political circumstances, the practice of States is the only sure guide to generally accepted and current notions of what is equitable in the sphere of continental shelf delimitation.

253. One of the striking features of the Libyan argument based upon proportionality is the air of unreality with which it is attended. This is immediately apparent when the Libyan *modus operandi* is applied to a sample of existing delimitations in comparable geographical circumstances. Four such cases may be taken:

(a) Denmark (Faroes) – Norway
(b) Bahrain – Iran
(c) Norway – United Kingdom (Shetlands)
(d) India (Nicobar Islands) – Indonesia

The actual delimitations resulting from the Agreements concluded between the countries involved, as well as the texts of those agreements, have already been provided by Malta in its Memorial.[1] The Reduced Maps reproduced in this Counter-Memorial in the pages which follow[2] show two lines: one is the actual line of delimitation under the appropriate Agreement – and is so indicated; the other is a line drawn on the basis of proportionality as propounded by Libya. The contrast is too evident to need any further comment.

(2) *Proportionality in Relation to Delimitations Involving Peninsular States Opposite Mainlands*

254. The isolation of the Libyan proposal of April 1973 from the general trend of the practice of States in matters of delimitation is illustrated further by the cases of peninsular States opposite mainlands. The cases set forth below are relevant in so far as they demonstrate that States have not applied a concept of proportionality in "opposite State" situations of the type adhered to by the Government of Libya. A study of the cases shows the absence of any criterion based upon the ratio of the lengths of the relevant coasts.

255. The delimitations involving peninsular States provide a general,

---

[1] See Reduced Maps at pp. 38, 63, 81 and 82 and Annexes 20, 22, 50 and 51 of Malta's Memorial.

[2] Reduced Maps No. 2, 3, 4 and 5.

but reliable, indication of the notions of equity actually applied by States in the practice of continental shelf delimitation. In conjunction with the evidence of the practice of States relating to island States opposite mainlands,[1] the evidence concerning peninsular States points unequivocally away from the Libyan conception of what is equitable and, in that context, of what satisfies proportionality as a *test* of what is equitable.

256. The precedents set forth below relate to delimitations involving peninsular States facing opposite "mainlands" abutting on the same shelf. The examples include the following[2]:-

(*a*) *Denmark – Norway, Agreement signed on 8 December 1965.*[3] Article 1 of this Agreement states that the continental shelf boundary shall be the median line. The alignment has a length of 255 nautical miles. The boundary is an average distance of 58.4 nautical miles from both Danish and Norwegian territory. The first five of the terminal or turning points lie off the attenuated feature which is the northern aspect of the Danish peninsula.

(*b*) *Iran – Qatar, Agreement signed on 20 September 1969.*[4] The agreement establishes a continental shelf delimitation between the two opposite States. In his analysis[5] the Geographer of the U.S. Department of State remarks that the boundary is "based on the equidistance principle with the exception that the presence of all islands in the Persian Gulf was disregarded".

(*c*) *Denmark – United Kingdom, Agreement signed on 25 November 1971.*[6] Article 1 of the Agreement also states that the delimitation of the continental shelf is in principle an equidistance line.

(*d*) *Iran – Oman, Agreement signed on 25 July 1974.*[7] The continental shelf boundary adopted in this agreement consists of a modified equidistance line. On the Omani side full effect has been given to the elongated Musandam Peninsula and the associated islands.

(*e*) *Australia – Papua New Guinea, Agreement signed on 18 December 1978.*[8] This delimitation applies to the continental shelf areas lying between the northern aspect of the Cape Yorke Peninsula and, across the Torres Strait, the southern coast of Papua New Guinea. The specific arrangements are elaborate and the alignment rests upon a negotiated compromise. Nonetheless it is evident that in principle the

---

[1] See paras. 252–253 above and the references to Malta's Memorial therein contained.

[2] The text of the Agreements is reproduced in Annexes 6, 7, 8, 9 and 10; but the charts annexed to the Agreements and showing the line of delimitation are reproduced in the pages which follow: Reduced Maps No. 6, 7, 8, 9, and 10.

[3] *Limits in the Seas*, No. 10 (Rev.). The 1965 Agreement was amended on 24 April 1968 following more precise geodetic calculations. The Exchange of Notes effecting the change is also reproduced as part of Annex 6.

[4] *Ibid.*, No. 25.

[5] *Ibid.*, p. 2.

[6] *Ibid.*, p. 9.

[7] *Ibid.*, No. 67

[8] *International Legal Materials*, Vol. 18 (1979), p. 291.

Cape Yorke Peninsula and its offlying islands have been given normal weighting.

5. CONCLUSION: THE LACK OF PERTINENCE OF THE RATIO OF LENGTHS OF COASTS

257. The reliance placed upon the argument based upon the ratio of lengths of coastlines in the Libyan Memorial is fundamentally in contradiction of the pertinent principles of law and equity. In the present case the equidistance method, on the contrary, satisfies the "test of proportionality" as a general means of evaluating the equitableness of the result produced by the application of the pertinent equitable principles and by reference to the relevant circumstances.

258. The lack of pertinence of the ratio of lengths of coastlines is established, in particular, by the following considerations:

(*a*) In the circumstances of the present case reliance upon the ratio of lengths of coasts constitutes a resort to a crude mode of apportionment based upon the discredited doctrine of "the just and equitable share".

(*b*) Such an approach is inapplicable as between opposite States abutting upon the same continental shelf.

(*c*) The Libyan reliance upon proportionality in this form is logically inconsistent with the prominent rôle accorded to "the principle of natural prolongation" in the Libyan Memorial.

(*d*) The Libyan position involves a substantial refashioning of geography, and "the only absolute requirement of equity" is that "one should compare like with like": but Malta and Libya have essentially different geographical identities.

(*e*) The alignment called for by the Libyan Government would constitute a major breach of the principle of non-encroachment.

(*f*) The practice of States provides no support for the equity of the Libyan contention but confirms the equity of the equidistance method in the circumstances of the present case.

PART IV

RESTATEMENT OF MALTA'S CASE IN THE LIGHT OF THE LIBYAN MEMORIAL

CHAPTER V

THE IMPORTANCE TO MALTA OF THE APPURTENANT CONTINENTAL SHELF

259. Malta lacks natural resources and explorations carried out indicate that there is no prospect of discovering mineral resources onshore. Malta has been recognised by the United Nations as having the status of an "island developing country".[1] With a limited territory and a population of 320,000 persons, Malta has an evident need for resources and, not least, sources of energy. There are good prospects of the discovery and production of oil in the appurtenant areas of continental shelf and, indeed, the most promising areas lie adjacent to the southern sectors of Malta's equidistance line. Malta thus has a significant interest in access to the mineral resources of the shelf.

260. It is also necessary to recall the importance to Malta as a coastal State of the exercise of political authority in respect of its appurtenant continental shelf. The "sovereign rights" which coastal States may exercise over the shelf are for the purpose of exploring it and exploiting its natural resources, but the exercise of such rights involves a general competence to maintain public order in the areas concerned as an aspect of the proper management of the resources. Moreover, the coastal State has security interests in the seabed lying off its coasts. It is obvious that such security interests are no less important when the homeland consists of a small group of islands. The Convention on the Law of the Sea confirms the security interests of groups of islands in so far as "archipelagic States" are accorded a special régime in respect of the archipelagic waters, as well as their bed and subsoil: see the elaborate provisions of Part IV of the Convention.

---

[1] For the documentation see Malta's Memorial, I, pp. 110–114, paras. 226–230, and Vol. II, p. 240, Annex 68.

CHAPTER VI

THE LEGALITY AND CONSISTENCY OF MALTA'S POSITION SINCE 1965

1. MALTA'S EQUIDISTANCE LINE

261. In accordance with the principles and rules of international law then existing, Malta's legal rights in respect of appurtenant areas of continental shelf were confirmed in a Note Verbale of 5 May 1965 and subsequently regulated by the Continental Shelf Act adopted in 1966. The form of this legislation was in no way exceptional. Like much other legislation employed by States in regulating their shelf rights, the Maltese enactment prescribed an equidistance line. The appropriateness of the equidistance method in delimitation of shelf areas dividing opposite States was not long afterwards confirmed by the Court in the *North Sea Continental Shelf* cases.[1]

262. Moreover several important agreements involving States of the Mediterranean region concluded in the same period relied either implicitly or explicitly on the equidistance method. These agreements[2] were made in the period between January 1968 and May 1977, and the parties included Italy, Yugoslavia, Tunisia, Spain and Greece. None of these instruments makes any reference to "special circumstances" and such a reference would be unusual in terms of the practice of States.[3] Yet the Libyan Memorial makes the odd complaint that the legislation of Malta omits such a reference.[4]

263. In the period since the Note Verbale of 1955 and the Act of 1966 Malta has behaved with complete consistency and this is admitted by the Libyan Memorial when it states that "Malta appears committed to the median line"[5] and draws the conclusion (from the conduct of the Parties) that "Malta has consistently advocated delimitation along a median line".[6]

2. THE DIVERSITY OF LIBYAN LINES AND SUBSTITUTES FOR LINES

264. The consistency of Malta's adherence to a delimitation based

---

[1] See below, para. 279.

[2] Malta's Memorial, Ann. 61 to 64. See also Map 2 of this Counter-Memorial.

[3] See below, para. 301, and the references therein made to the Annexes in Malta's Memorial.

[4] Paras. 4.06, 9.34 to 9.35.

[5] Para. 9.38.

[6] Para. 9.43.

firmly upon customary international law, and reflecting the principles applicable in the geographical framework of the coastal relationships of Malta and Libya, is to be contrasted with the diversity and inconsistency which have characterised the Libyan view of delimitation in this case.

265. Malta's 1965 Note Verbale and the legislation of 1966 evoked no protest or reservation of rights from Libya, and the first expression of a different view on the issue of delimitation on the part of Libyan officials took place at the meeting of delegations in April 1973.[1] The first Libyan concessions in the area which infringed Malta's median line of 1965 were granted in September 1974.[2] These essential facts are not contradicted by the history of the dispute as presented in the Libyan Memorial.[3]

266. The Libyan Government's position since 1973 has been characterised by a significant number of variations, and this diversity contrasts with the consistency of the position of Malta dating back to its 1965 Note Verbale. The insecurity of the Libyan stance is well characterised by the loose formulation of the Libyan Submissions, of which paragraph 9 refers to "a delimitation within, and following the general direction of, the Rift Zone as defined in this Memorial". The "Rift ⑨ Zone", as indicated by Map 17 (and the overlay), is a feature which, in the area relevant to the present proceedings, has a breadth of more than 100 kilometres.

267. The Libyan positions on delimitation include the following:

(*a*) *Acquiescence in Malta's Equidistance Line 1965 to 1973.* It may be noted that until the meetings of the delegations in April 1973 Libya had failed to make any protest or express any reservation in response to Malta's 1965 Note Verbale and Legislation of 1966 and the equidistance line thus constituted.

(*b*) *The 1973 Ratio of Coastal Lengths proposal.* In the course of the meeting of delegations on 23 and 24 April 1973 the Libyan Government proposed a line of division which was the product not of a method of delimitation but of a system of apportionment based upon a concept of proportionality in terms of the ratio of the lengths of the Maltese and Libyan coasts.[4] The resulting division is depicted by Map ⑤ 9 in the Libyan Memorial and is also reproduced in this Counter-Memorial.[5] The "line" indicated represents an arbitrary process of division and bears no relation to any known method of delimitation.

(*c*) *A Boundary within the "Rift Zone".* In the Libyan Memorial, and in the Submissions of the Libyan Government, the position is adopted according to which the "Rift Zone", as identified by Libya, constitutes a discontinuity which separates the natural prolongations of

---

[1] Malta's Memorial, p. 23, para. 65.

[2] *Ibid.*, pp. 17–18, para. 37.

[3] See Libyan Memorial, paras. 4.24–4.57; 6.70–6.73; and 9.25–9.43.

[4] See Libyan Memorial, para. 4.33; Ann. 39.

[5] Map 4.

Malta and Libya.[1] The boundary lies within this Zone, according to the Libyan thesis, but Libya does not indicate a precise line.[2]

268. It may be noted that these three positions are not variants of the same principle but are radically different in provenance. In particular, the proposal based on the ratio of coastal lengths purports to reflect the *test* of proportionality – though *as applied* it becomes a *substitute* for a method of delimitation. The "Rift Zone" boundary is supposed to be based upon natural prolongation and thus has a totally different technical provenance. The result is that the "proportionality"
⑤ line of division (Map 9 of the Libyan Memorial) contrasts with the vague concept of a boundary to be discovered within the extensive area
⑨,⑳ of the "Rift Zone" (Map 17 of the Libyan Memorial). Map 4 of this Counter-Memorial reproduces both boundaries.

269. The proposal based upon the ratio of coastal lengths and the "Rift Zone" boundary represent two distinct conceptions which cannot in legal terms be complementary since they lack a common basis. The one common feature is the fact that neither position involves a method of delimitation. The proportionality position constitutes a claim to a just and equitable share as has been explained above in Chapter IV. The "Rift Zone" thesis bears no relation to the proposal of 1973 based upon the ratio of coastal lengths and is not a reasonable indication of a method or principle of *delimitation*. The identification of a *zone*, as shown on Map 17 of the Libyan Memorial, or Map 4 of this Counter-Memorial does not even approximate to a method of delimitation. Delimitation involves the identification of a *limit*, or *line*. In the present case the Court is asked to identify the "principles and rules" applicable to the "delimitation" of the area. The Court is not asked to identify the "principles and rules" applicable to the identification of a "zone".[3]

---

[1] Libyan Memorial, paras. 6.54, 7.15, 8.17, 9.64 and 10.18.

[2] *Ibid.* paras. 7.15 and 10.18; and see Map 17 (following p. 160 of Libyan Memorial).

[3] See Part II of this Counter-Memorial on the Task of the Court, paras. 68–74.